

PROCEDURE FOR SUBDIVISION OF BUILDINGSAS LAID DOWN IN THE NATIONALLAND CODE, 1965

The purpose of the newly-created Strata Titles or Subsidiary Titles is to enable title to issue in respect of individual units within multi-storeyed buildings. Although such buildings are necessarily built by the developer, who may be an individual or a corporation, it is the normal practice for the developer, or his successor, to sell individual shops, offices, flats or other internal units to those persons who will occupy them. These units are termed "parcels" in the Code.

The developer holds the title to the land on which the subdivided building stands, called the "original title". On subdivision, individual titles in respect of the individual parcels or units will be created. But the registration and issue of these titles will not result in the original title to the land being discontinued. The original title is only affected by an endorsement and memorial made under Section 153(7) and Section 163(1). It will not be discontinued as in the case of the subdivision of land under Section 135. The term "subsidiary title" is used so as to indicate that the title to the internal parcel is "subsidiary" or "subordinate" to the "original title" since it results from the "original title" upon the

subdivision of the building.

Section 153 provides that any application for the approval of the State Director for the subdivision of any building or buildings must be made in writing to the Collector in Form 9D. Together with his application the applicant must submit the following:

- (i) the prescribed application fee;
- (ii) three copies of index plan under Section 153(2) specifying lot number, land boundaries, position of all buildings, total ground floor area of each building to be subdivided, vertical section of each building showing distances between floors and ceilings and the height of each storey, taking into consideration the thickness of each floor or ceiling -
 - (a) The vertical boundary of each floor is the middle point of the said floor e.g. for an 8 inch floor thickness the boundary is at the 4 inch point. If the bottom storey does not have a floor thickness because it is the ground floor in a building

without basement or it is a basement, then the vertical boundary is to have the same extent of floor thickness as the storey immediately above, i.e. of either the first floor or the ground floor. (e.g. if its thickness is 8 inches the point of the vertical boundary is at the 4 inch point from the floor level.

This is provided for by Section 155(3). However, it has been felt by some lawyers and surveyors that the section is vague and ambiguous. Section 155(3) can be interpreted in two ways. If it is interpreted in the first way, it means that the common boundary between a parcel and another parcel or between a parcel and the common property is the centre of the wall that separates the parcel from another parcel or from the common property. This means that only the inner half of the wall will become the property of the subsidiary proprietor, while the outer half will belong either to the neighbouring subsidiary proprietor or to the management corporation. As between neighbouring subsidiary proprietors there will be no difficulty. But as between a subsidiary proprietor and the management corporation certain complications may arise. For example, penthouse suites will lose their

value if the management corporation is free to allow commercial companies to put up advertising signs along the outer wall of the penthouse suites. Similarly, shops and offices will not be able to indulge in any window dressing or to display their goods behind the glass walls bordering the corridors if the management corporation can allow advertisers to put up their advertising banners on the outer surface of the walls. On the other hand, if we interpret Section 155(3) in the second way, the word "wall" refers only to a "party wall". In this way there will be no complications because if there is a party wall, the common boundary will be the centre of that party wall and if there is no party wall, the common boundary is the outer surface of the wall.

- (b) The plan is to be certified by a licensed surveyor or an architect under Section 153(4).

The certificate by the licensed surveyor or architect merely relates to the correctness of the plan and may therefore be given by either of the practitioners.

- (iii) three copies of the storey plan of the building specifying lot number and title number of the land, building number and storey number. It should

show parcel boundaries with letter or number describing them, the total area of each parcel and boundaries of common property;

The storey plan is to be certified either by a licensed surveyor or an architect under Section 153(4)(b). The certificate relates to the correctness of the plan after comparing it with the approved plan and after ascertaining that the parcel boundaries agree with the construction. The parcel boundaries must be walls of permanent construction: a cubicle enclosed by impermanent partitions cannot be treated as a parcel. The reason is that if the walls are of a temporary nature, they may be knocked down by the subsidiary proprietor. When this happens the Strata Title to the parcel will not be accurate and problems will arise with regard to the identification of the parcel.

- (iv) a certificate by a licensed surveyor under Section 152(a) that the building is correctly situated within the lot;
- (v) a certificate by a registered architect under Section 152(d) that the building was constructed according to the approved plan. The name of the approving

authority, the reference number of the approved plan and the date of approval must be stated;

A certificate of fitness for occupation cannot be accepted as a certificate under Section 152(d).

(vi) the written consent of the chargee, lessee, the chargee of the lease of the land and the lien-holder under Section 152(f); and

(vii) the issue document of title if it is not in the hands of the chargee or lien-holder under Section 153(g).

After having received the application together with the documents listed above, the Collector must satisfy himself that the following conditions have been complied with:-

- (a) a licensed surveyor has certified that the building is wholly within the lot - Section 152(a);
- (b) subdivision is not restricted by restrictions in interest - Section 152(b);
- (c) subdivision is not contrary to any written law - Section 152(c);

- (d) the building plan has been certified by a registered architect that the building has been constructed according to the approved plan and specifications - Section 152(d);

The number and boundaries of parcels should agree with the number and boundaries of units approved by the Local Authority.

- (e) land revenue is not in arrears - Section 152(e);
- (f) chargee or lessee or lien-holder has given his consent - Section 152(f);
- (g) the land is under Registry title - Section 151(l);

The land on which the building to be subdivided stands must be held under Final Title. If the land is under Qualified Title, which is a title issued in advance of survey, the application for subdivision of the building will be rejected.

- (h) the land must contain only building or buildings to be used in conjunction with the one to be subdivided - Section 151(l)(b);
- (i) each parcel has adequate and independent access not passing through another parcel and adequate means of internal communication not passing through common property - Section 154(l)(a); and

(j) the building to be subdivided has a ground floor area not less than 5,000 sq. feet and has two or more storeys above ground level - Section 151(1)(a).

The reason behind the limitation of the ground floor area to 5,000 sq. feet is the fear that impossible congestion would occur in Registries if, for example every owner of a shop-house could apply for Strata Titles. (Tenancies exempt from registration or unregistered tenancies were introduced because of the same reason). The figure 5,000 sq. feet was adopted therefore to restrict the number of buildings which could enjoy the facilities for Strata Titles under the National Land Code, 1965,¹ to the more complex buildings. In Australia and in Singapore, there is no limitation placed on the ground floor area of the building. So long as the building has two or more storeys or two or more strata, it is capable of being subdivided and Strata Titles may be issued. Thus in Australia and in Singapore, owners of shop-houses can apply for Strata Titles.

It is to be noted however, that under Section 151(1)(a), the State Authority is empowered by Section 14(1)(e) to prescribe an area less than 5,000 sq. feet. This power to prescribe for an area less than 5,000 sq. feet is given to the State Authority because it was

¹Act No. 56 of 1965.

UNIVERSITI MALAYA

envisaged at the time of the drafting of the National Land Code, 1965,² that the limit of 5,000 sq. feet may be too high and may exclude many perfectly acceptable modern buildings of several storeys in height but on a very narrow base. If such an event should arise the State Authority can invoke the power given to it in Section 151(1)(a) and prescribe for an area less than 5,000 sq. feet. But so far there have been no Land Rules made for the purposes of prescribing for an area less than 5,000 sq. feet.

Section 151(1)(a) implies that one or more buildings on the lot in question may be subdivided. For example, it may be possible to subdivide five multi-storeyed buildings situated on one lot by treating one of the buildings as the "main building" within the meaning of Section 151(1)(a) and the other four buildings as "subsidiary buildings" within the meaning of Section 151(1)(b). However, it has been felt that such a scheme will result in the creation of the following disadvantages or difficulties:

- (a) Difficulties in the identification of titles and title numbering because Subsidiary Title Form 10C does not contain building number but contains details regarding parcel number and

²Act No. 56 of 1965.

storey number;

- (b) Difficulties in the exercise of rights by subsidiary proprietors in the use, enjoyment and maintenance of common property under by-law 5, 8, 9, 10, 11, 12 and 13 of the Eighth Schedule;
- (c) Difficulties in organising and conducting the general meeting of the Management Corporation and the appointment of a Council; and
- (d) Legal difficulties in the implementation of the provisions of Section 370 relating to the damage or destruction of a building.

It appears to be the intention that there should be only one main building together with subsidiary buildings on any land affected by the subdivision of a building and the word "buildings" occurring in the various sections of Chapter 4 and in Section 355 is supposed to refer to the subsidiary buildings only.

Collectors have therefore been advised that for the purpose of Section 151(1)(a) an application for subdivision of building should only be entertained if it affects one main building plus a number of subsidiary

49

buildings and the subdivision creates the following constituents:

- (a) a main building subdivided into parcels;
- (b) one or more subsidiary buildings also subdivided into parcels such as annexes or extensions to the main building e.g. a block of servants's quarters in which individual units are attached to particular flats in the main building or garages similarly subdivided and attached;
- (c) one or more subsidiary buildings not divided into parcels but held in common by the parcel proprietors such as buildings which are used as an undivided whole for the purposes of the main building e.g. an air-conditioning plant, private pumping station or electric sub-station for the use of the building alone; and
- (d) the un-built on balance of the lot, also held in common such as courtyards, service areas, parking spaces, gardens and the other open spaces.³

³ Director-General of Lands and Mines, Federal Circular, No. 25/1974.

50

Applicants for subdivision of more than one building of similar status (e.g. two or more identical block of flats) as the main building and situated within the same lot therefore are advised to subdivide the land under Section 135 so that each building comes under the title of a separate lot. Thereafter they may apply for subdivision under Section 151.

Section 151(3) defines "storey" as any horizontal division of a building whether or not on the same level throughout, and whether above or below the surface of the ground. Further assistance for the interpretation of "storey" may be obtained from the Australian case of Apex Developments Pty. Ltd. v. Holroyd Municipal Council.⁴ It was an appeal on a question of law by a landowner against a decision of a board of appeal appointed under the Local Government Act, 1919. The plaintiff, Apex Developments Pty. Ltd., the owner of certain land on which was erected a factory building, applied for subdivision of the building into five lots (known as parcels under National Land Code, 1965⁵) with the intention of registering a strata plan in respect of it so that each lot could be occupied for industrial purposes.

⁴ [1974] 1 N.S.W.L.R. 313.

⁵ Act No. 56 of 1965.

The floor levels of the units vary; the floor levels of units 3 and 5 was five feet below the floor level of unit 1, and the floor levels of units 2 and 4 were respectively two and three feet below the floor level of units 3 and 5. Each unit was separated from its neighbours by a brick wall nine inches thick extending from floor to roof. The roof and ceiling formed a continuous non-stepped level covering the entire building. Within each unit was an amenities block consisting of an office, toilets, showers and change and lunch rooms.

In order that strata subdivision of the building would be allowed, the plaintiff added a store room 140 sq. feet in area over the lunch room of unit 5, for the exclusive use of the occupier of unit 1. This room had no windows and no ventilation other than through the door, which was six feet eight inches high and two feet and eight inches wide and was situated four feet and six inches above the floor level of unit 1. At the time when the appeal was before the board, there were no steps leading up to this room and it was unlit, but later temporary steps and electric light were provided.

In summary then the plaintiff's building to outward appearances is a brick building with a roof and ceiling at one level. Inside it are five lots or units, all but two of which are at different levels; and one of which has the store room being constructed over part of the adjoining

unit, that is lot 5.

One of the requirements of a "strata plan" as defined in Section 2 of the New South Wales Conveyancing (Strata Titles) Act, 1961 is that the plan must show the whole or part of the land comprised therein as being divided into two or more strata.

Sheppard J. held that the term "stratum", although not defined in the Act meant a horizontal, as distinct from vertical, section of a parcel of land. He agreed with Hardie J. in Williams v. North Sydney Municipal Council⁶ that it was reasonably clear the building made the subject matter of a strata plan must be of more than one floor or storey although he preferred to say that the building will usually comprise more than one floor or storey. He therefore held that the building in question was certainly not one which was more than one storey or floor in the sense of being a two storey building. It was a split level construction, the highest level, omitting for the moment the store room, being the floor level of lot 1, and the remaining levels in descending order being the floor levels of lots 5, 3, 2 and last of all, 4. In the opinion of the learned judge the store was not to be regarded as a stratum within the meaning of the Act. However the learned judge administered the following

⁶ (1965) 11 L.G.R.A. 224, at p. 229.

caution in the course of his judgment:

"It would be difficult to lay down a hard and fast rule as to whether particular types of buildings are generally to be regarded as being divided into two or more strata or not. To attempt to do so would in any event be undesirable because it is impossible to foresee, for the future, what designs may need be considered by those concerned with the administration of the Act. The ingenuity of persons who design buildings, like that of lawyers, is boundless. Each case must be looked at in the light of its own facts. The matter will often be one of degree. Some cases will clearly fall on one side or the other of the dividing line. Others will be more difficult to resolve."⁷

Section 3 of the Republic of Singapore Land Titles (Strata) Act, 1967,⁸ as amended by the Land Titles (Strata) (Amendment) Act, 1976,⁹ defines "stratum" to mean any part of land consisting of a space of any shape below, on, or above the surface of the land, or partly below and partly above the surface of the land, the dimensions of which are delineated.

⁷ Op. cit. n. 4, at p. 321.

⁸ Act No. 41 of 1967.

⁹ Act No. 4 of 1976.

When the Collector has satisfied himself that all the ten conditions listed down earlier have been complied with, he will then transmit the application to the State Director of Lands and Mines under Section 153(6). On receipt of the application for subdivision the State Director of Lands and Mines will direct the Registrar to make a note in the register under Section 153(7) to read as follows:

"Application made for subdivision of building(s) on this land this day of 19"

This note will be cancelled on refusal of the application. On approval of the application, action will be taken as follows:

- (i) the State Director of Lands and Mines sends the application and other documents to the Director of Survey - Section 154(2)(a);
- (ii) the Director of Survey notifies the State Director of Lands and Mines of the estimated amount of survey fees to be collected - Section 154(2)(b);
- (iii) the Collector collects the estimated survey fees - Section 154(2)(b);
- (iv) Survey of the land and buildings is carried out - Section 155(1)(a);

(v) the Director of Survey prepares and supplies the State Director of Lands and Mines:-

(a) one copy of certified plan for the register document of title; and

Each certified plan should contain, inter alia, the building number and storey number; boundaries, area and parcel number of all the parcels; boundaries of common property; and as an inset a vertical section of the subdivided building showing the position of all storeys, a plan of the land showing the position of building and building number. Basically, the certified plan is a reproduction of the storey plans submitted by the developer, but to these are also added features of the index plan. In practice, each folio of the certified plan will bear an inset - on a reduced scale - of the plan of the lot and the vertical section of the building as shown in the index plan.

(b) one copy of a certified parcel plan for the issue document of title.

This is the usual case. However, a parcel may be built so as to extend beyond the limits of one storey into another storey, such as a split-level apartment which is a parcel occupying two storeys. The bedrooms may be on storey 2 while the sitting room, dining room and kitchen are on storey 1. Instead of only one copy of the certified parcel

plan there will be two copies. In this way the subsidiary proprietor will have two certified parcel plans and the extent of his property will be outlined on both the plans so that he knows exactly the site and location of his parcel within the subdivided building. Each copy of certified parcel plan should show the boundaries and position of the parcel in the storey, the parcel number, and the parcel area; the building number and storey number and as an inset a vertical section of the subdivided building showing the position of all storeys, a plan of the land showing the position of the building and building number.

(vi) the Director of Survey notifies the State Director of Lands and Mines of the additional survey fees to be collected or of the amount to be refunded;

(vii) the Collector collects the additional survey fees and registration fees - Section 156; and

(viii) the Director of Lands and Mines directs the Registrar to open a book of Subsidiary Register and to prepare, register and issue documents of subsidiary title - Section 156.

PREPARATION OF SUBSIDIARY REGISTER

Under Section 161(1) the Registrar is required to maintain a register of Subsidiary Title or Subsidiary Register, containing books which relate to respective lots of subdivided buildings.. Each book should be numbered according to its position in the Subsidiary Register; it is to be given a number, e.g. "Subsidiary Register Book No.".

Each book in the Subsidiary Register should contain the followings:-

- (a) Subsidiary Register Index Form 10A.
- (b) Subsidiary Register Statement Form 10B.
- (c) a copy of Certified Plans, one copy of Certified Plan or Plans for each storey.
- (d) Subsidiary Titles or Strata Titles for all parcels Form 10C.

The folios in each book should be in the above-mentioned order.

ISSUE DOCUMENT OF TITLE FOR EACH PARCEL

The issue document of title for each parcel is prepared by using Form 10C to which is attached a certified parcel plan - Section 162(1).

REGISTRATION OF SUBSIDIARY TITLES OR STRATA TITLES

Documents of Strata Titles are registered under Section 163(3) to be followed by the endorsement of the following memorial in the register and issue document of title of the lot of the subdivided building or buildings:

"Subsidiary Register No. opened and the common property of the subdivided building is vested in the management corporation this day of 19"