

PROBLEMS FACED IN THE IMPLEMENTATION OF
STRATA TITLES IN WEST MALAYSIA

Ten and a half years have elapsed since the introduction of Strata Titles into West Malaysia by the National Land Code, 1965.¹ However, it is very disappointing to discover that during that ten and a half year period only three applications have been successfully dealt with and three sets of Strata Titles issued accordingly. Ipoh, the capital of Perak, was the pioneer in this field. The first successful application came from Ipoh in 1968. It was the result of the initiative of a private surveyor by the name of E. G. Caswell. It took four years before Strata Titles were finally issued to the applicant. The second application took two years to be approved and for Strata Titles to be prepared and issued. The third application took only one year. It was made in 1971, approved in the same year and in 1972 the Strata Titles were issued.²

In Kuala Lumpur, there is only one application for Strata Titles and it has been pending since 14th October, 1966. It had been approved on 12th June, 1969, and was sent to the Survey Department so that a certified plan

¹Act No. 56 of 1965.

²Interview with Encik Ahmad Salim, on March, 1976 at the Ipoh Land Office.

could be prepared in accordance with Section 155(1)(b). On 10th October, 1975, the certified plan was sent to the Land Office. But until now, although the Strata Titles have already been prepared they are still lying in the Land Office, and have yet to be issued.³

The above applications (in Ipoh and in Kuala Lumpur) were from private developers. As far as government flats are concerned, the two tables below show that although there are at present 8,630 government flats in Kuala Lumpur and 2,855 government flats in Selangor, not a single Strata Title has been issued in respect of them.

Table 4.1

KUALA LUMPUR: NUMBER OF GOVERNMENT FLATS AND NUMBER OF STRATA TITLES ISSUED; 1976		
AREA	Total flats	Total Strata Titles issued
1. Suleiman Court	274	-
2. Tun Tan Cheng Lock Mansions	1014	-
3. Tun Razak Mansions	661	-
4. Jalan Shaw	786	-
5. Jalan Pekeliling	2969	-
6. Jalan Cheras	1260	-
7. Bukit Bangsar	864	-
8. Jalan San Peng	802	-
	8,630	-

Sources City Hall, Kuala Lumpur.

³ Interview with Encik Mohamed Said bin Suratman, on March, 1976, at the Federal Territory Land Office, Kuala Lumpur.

Table 4.8**SELANGOR: NUMBER OF GOVERNMENT FLATS AND
NUMBER OF STRATA TITLES ISSUED, 1976**

AREA	Total flats	Total Strata Titles issued
1. Ampang / Ulu Klang	688	-
2. Datuk Keramat	144	-
3. Kampong Kerinchi	461	-
4. Jalan Kuching	198	-
5. Sungai Bahru	258	-
6. Jalan Pekeliling	230	-
7. Shah Alam	416	-
8. Section 17	460	-
	2,855	-

Source: Selangor State Development Corporation.

Such is the progress made by West Malaysia in the implementation of Strata Titles. It is certainly a poor state of affairs compared to the progress Australia has made in this area of the law. In 1961, New South Wales passed the Conveyancing (Strata Titles) Act,⁴ Since 1961,

⁴Act No. 17 of 1961 (as amended by Act No. 55 of 1961).

some 8,500 strata plans have been registered in the office of the Registrar-General and approximately 100,000 certificates of title have been issued in respect of lots (or parcels) comprised in those strata plans.⁵

In view of the progress Australia has made and if indeed Strata Titles are manifestly more advantageous than the other methods of achieving ownership, then there is clearly a lack of response for Strata Titles in West Malaysia. In the writer's opinion, there are seven reasons which may account for this lack of response. They are:

- (1). The existing provisions of the National Land Code, 1965,⁶ relating to Strata Titles are inadequate.
- (2). The machinery for the implementation of Strata Titles is not complete.
- (3). Delay in the issue of Strata Titles by the Land Office.
- (4). Delay in the preparation of a certified plan by the Survey Department.

⁵ Collins, D.A., Strata Title Units in New South Wales, Sydney, Butterworths, 1974, p.5.

⁶ Act No. 56 of 1965.

- (5). Ignorance on the part of some developers as to the existence of Strata Titles.
- (6). Lawyers and developers take a "wait and see" attitude.
- (7). Sceptism on the part of some as to the workability of Strata Titles in West Malaysia.

1. EXISTING PROVISIONS OF THE NATIONAL LAND CODE⁷ ARE INADEQUATE

Although Section 367(1) provides for the formation of a management corporation as soon as a book of the Subsidiary Register is opened, there is no penalty imposed on the original proprietor who fails to form a management corporation once he has executed transfers of the Strata Titles to the new subsidiary proprietors. In Ipoh, in connection with the first successful application for Strata Titles, the developer (i.e. the original proprietor) has already transferred all the Strata Titles to the new owners, but there is still no management corporation to manage the common property. The developer is still taking upon himself the duties and obligations which should by right be vested in the management corporation. He controls, manages and maintains the common property out of the moneys paid to him by the subsidiary proprietors. He keeps the

⁷Act No. 56 of 1965.

common property in good repair. Complications will arise should the developer refuse to do the above and decide instead to relinquish all responsibilities to the new subsidiary proprietors. Unless there is someone to take the lead it will be difficult for the subsidiary proprietors to form a management corporation all by themselves.

Section 360(1)(d) requires the management corporation to insure the building to its replacement value against fire and to keep it so insured, unless directed otherwise by unanimous resolution. But failure to comply with the provisions of the section is not an offence punishable under Section 362. If a fire breaks out and destroys the building problems will arise as was the case with the recent fire at the Campbell Shopping Complex in Kuala Lumpur.

Section 363(5)(a) reads as follows:

"No bye law shall be capable of operating -
to prohibit or restrict the transmission,
transfer, lease or charge of, or any
other dealing with, any parcel of a
subdivided building."

What the provision means is that Strata Titles confer ownership and with ownership there is free assignability. It has been stated earlier that one of the most important advantages of Strata Titles is that a

subsidiary proprietor is free to dispose of his property to whosoever he pleases and in whatever manner as long as it is permitted by law.⁸ The section merely embodies this advantage by providing that none of the provisions contained in the Eighth Schedule or the bye laws which are made by the management corporation can impose any restrictions or prohibitions on the free assignability of individual parcels.

The section does not give rise to any problem if the parcels or flats are private parcels or private flats. But when they are government flats the presence of Section 363(5)(a) gives rise to serious problems. It is undoubtedly the government policy that government low cost flats are intended for people of the lower income group who are unable to purchase houses of their own. The policy will be defeated if the flat-occupiers are free to sell their flats to persons of the higher income group, or if they are free to charge their flats as security for loans because if they default in the discharge of the loans they forfeit their flats to their creditors. When this happens the government is faced with the housing problem again.

The more serious problem is that of the resettlement of squatters in government low cost flats. In Kuala Lumpur, there are a number of flat schemes where 50% to 90% of the flat occupants are resettled squatters; 60% of the residents

⁸ See *infra*, chap. 2.

in Tun Razak Mansions are resettled squatters; 50% of the residents in the Jalan San Peng flats are resettled squatters; and 90% of the residents in the Jalan Cheras flats are resettled squatters.⁹ The resettled squatters pay only a subsidised rent while the other costs of maintaining and managing the common property such as lifts, corridors, roofs, drains and the compound are being borne by the local authority concerned, namely, City Hall. Yet City Hall finds difficulty in collecting the subsidised rents.

At present in Kuala Lumpur, the City Hall is renting out all the government flats. However, there is public agitation for ownership as against mere renting and this coupled with the liability of maintaining the flats may force City Hall to dispose of the flats to the present tenants. But City Hall is reluctant to apply for the issue of Strata Titles because once Strata Titles have been obtained and transferred, City Hall's influence and control are completely extinguished. The flat occupants will be left entirely to themselves. City Hall officials are apprehensive as to the outcome of handing over the ownership of the flats to the present tenants.¹⁰

The cost of maintenance for a block of flats seventeen storeys high is very heavy. If there is difficulty

⁹ Interview with Mr. Chee Kim Fatt, on 13th July, 1976, at the Housing Division of City Hall, Kuala Lumpur.

¹⁰ Interview with Encik Khuzaima bin Haji Yunus, on 7th April, 1976, at the Housing Division of City Hall, Kuala Lumpur.

in collecting rents from the resettled squatters now, there is no guarantee that they can afford or will be willing to contribute to the cost of maintaining the common property.

SOCIOLOGICAL AND PSYCHOLOGICAL PROBLEMS

Living in flats produces stress and strain for the resettled squatters. The underlying reason is the psychological effect of being twenty-four hours in cramped conditions as the flats have very limited space. To add to this most of the squatters have large families. Finally hot city conditions also play quite a major part in causing flat-dwellers (i.e. the resettled squatters) to become highly irritable and hence quarrels break.

Prior to resettlement the squatters were free to do a little vegetable gardening and some poultry farming. No matter how poor they were they could manage because they could rely on their little vegetable patch and the few fowls they kept in their backyards. They paid no rent or very little rent and since there was no electricity (they either installed their own generators or used kerosene lamps) and no piped water they paid no rates. For water they could rely on public taps.

But all these changed drastically when they were moved (much against their will) to government low cost flats. Their freedom was curtailed. They could no longer rely on their little vegetable patch or the few chickens

and ducks they reared. They had to pay for electricity and for water and they had to pay the subsidised rent which they found difficult because most of them had no fixed income and no steady jobs. All they could manage was to eke out a meagre livelihood. All the factors combine together to cause frequent quarrels and misunderstandings among the resettled squatters.

In Selangor, the government low cost flats are within the management and control of the Selangor State Development Corporation (S.S.D.C.). Out of the eight low cost flat schemes,¹¹ four are for resettled squatters. They are the flats in Datuk Keramat, Kampong Kerinchi, Sungai Bahru and Jalan Pekeliling. The S.S.D.C. has its own system of handling disputes. The common offences are vandalism (e.g. burning of rubbish in rubbish bins and dirtying of walls) and petty theft (e.g. stealing of electric bulbs). Where there is a quarrel between two neighbouring flat-dwellers and if the quarrel does not stop after arbitration by the S.S.D.C. officials, the trouble-maker is evicted by legal action. But if both parties are responsible for the quarrel, the S.S.D.C. officials will shift both parties to different flats. In cases of criminal assault where the police are called in, the S.S.D.C. will not get involved.

¹¹See infra, chap. 4, Table 4.2.

At present there is a flat committee member from each block of flats. The flat committee members hold meetings with the S.S.D.C. officials. The meetings are useful because they represent the only form of contact between the S.S.D.C. and the flat-dwellers. The flat committee members will try to settle the disputes among the flat-dwellers. If they fail, the disputes will be referred to the S.S.D.C. and the S.S.D.C. will decide the disputes and take measures to settle the disputes. Common disputes not settled by the flat committee members are those involving dripping clothes from an upstairs flat, babies crying all the time and gambling. In addition to the meetings between the S.S.D.C. and the flat committee members, the S.S.D.C. also issues forms which are distributed among the flat-dwellers. The daily complaints will be written down in the forms and handed over to the S.S.D.C. which will then take whatever action it deems fit.

12

City Hall, Kuala Lumpur, also has its own system of settling disputes among the flat-dwellers. In each flat scheme or estate, there is an officer of City Hall called the "Pelawat Perumahan" (Housing Visitor or Housing Supervisor) who is entrusted with the task of solving any problems which may arise between the tenants and the administration (i.e. City Hall). A "Pelawat Perumahan" is

¹² Interview with Encik Abdullah Sani bin Mohamed Nor, on April, 1976, at the Housing Division of the S.S.D.C., Petaling Jaya.

attached to each flat scheme. So far all the "Pelawat Perumahan" are women. If the "Pelawat Perumahan" is unable to settle the dispute (especially where it is a dispute between two parties of different races) that has been brought to her notice, she will refer the matter to the officer-in-charge of the Housing Division, called the "Pengurus Perumahan". The "Pengurus Perumahan" will then decide the dispute after consulting the Goodwill Committee of that particular flat scheme or estate. The Goodwill Committee of a flat scheme is elected by the flat-dwellers of that flat scheme and approved by the National Unity Section of the Prime Minister's Department. The Committee meets once a fortnight.

Where there are two tenants who quarrel frequently, City Hall officials will suggest to them to shift to other flats within that flat scheme. This is possible because in each flat scheme there will always be two or three vacant flats to provide for emergencies, such as fire, flood or other civil disasters. So far over a time span of twenty years, there have been only three cases of eviction which could not be avoided because they involved mentally-deranged tenants who caused disturbance to the other tenants. There has been no dispute which has gone before a court of law.

UNIVERSITY MICROFILMS

The reason why there are not many disputes is because of the influence and control City Hall has over the tenants and the flats. If a tenant fails or refuses to comply with an order, City Hall will, first of all, issue a warning. If the warning goes unheeded, City Hall will proceed to cut off the water supply to the flat of the defaulting tenant. If the tenant still persists in refusing to comply with the order, a notice of eviction will be sent to him. Experience has shown that the notice of repossession or eviction is a very effective means for settling disputes. But once Strata Titles are issued and transferred to the tenants, they will become the subsidiary proprietors of the flats. Since they are the owners of the flats the fear of eviction will cease to exist. There is thus a well-founded fear that if City Hall relinquishes its control over the flats, disputes will multiply and conditions will deteriorate.

The Selangor State Development Corporation (S.S.D.C.) like City Hall is renting out the flats although in some cases the S.S.D.C. has sold certain flats to the present occupiers of the flats. Therefore, once all purchase moneys have been paid to the S.S.D.C., it will have to transfer ownership of the flats to the purchasers. It means that the S.S.D.C. will have to apply for Strata Titles.

¹³ Interview with Mr. Chee Kim Fatt, on 13th July, 1976, at the Housing Division of City Hall, Kuala Lumpur.

Although the S.S.D.C. wants to dispose of the flats as soon as possible since maintenance is a heavy liability, yet at the same time, it is not prepared to apply for the issue of Strata Titles because it shares the same fears as City Hall. One of the worst fears is that the flats will be turned into slumps.¹⁴

2. GOVERNMENT MACHINERY FOR THE IMPLEMENTATION OF STRATA TITLES IS NOT COMPLETE

This true of the position in Kuala Lumpur. The first application for Strata Titles was from Kuala Lumpur. It has been pending since 14th October, 1966. Although the title have been prepared, the Registrar has yet to open a register of Strata Titles called the Subsidiary Register pursuant to Section 161 of the National Land Code, 1965.¹⁵ Until and unless the Subsidiary Register is opened the machinery for the implementation of Strata Titles will remain incomplete in the Federal Territory.

"The National Land Code became law in 1965 and ten and a half 7 years later if an important part of the Code cannot be implemented then with respect one is not only entitled to draw attention to it but I respectfully

¹⁴ Interview with Encik Abdullah Sani bin Mohamed Nor, on April, 1976, at the Housing Division of the Selangor State Development Corporation, Petaling Jaya.

¹⁵ Act No. 56 of 1965.

suggest is obliged to do so."¹⁶

But in Ipoh, the machinery is complete as three sets of Strata Titles have already been issued and three Subsidiary Registers have been opened in respect of them.

3. DELAY IN THE LAND OFFICE

In Ipoh, the first application took four years, the second application took two years while the third application took one year before Strata Titles were finally issued to the respective applicants. Developers are businessmen and being businessmen time is of extreme importance to them. Once a block of flats has been completed, the developer cannot afford to wait until Strata Titles are issued before he disposes of the flats to individual purchasers. If he were to wait he will have to wait at least one year in view of the fact that the third application took one year to be approved and for Strata Titles to be issued. This means therefore, that he will have a white elephant on his hands. He incurs expenses paying the rent but earns no income since the flats are vacant and unoccupied. Thus, developers are reluctant to apply for Strata Titles. Some developers are still practising the other methods of conferring ownership because they feel that those methods are quicker and faster than the

¹⁶George, V.C., *Insaf*, The Journal of the Bar Council, Vol. VIII No. 2, August/September 1975, p.9.

Strata Titles method of conferring ownership.

However, it has been said that after the past experience with three applications in Ipoh it will now take only one month to process and issue Strata Titles. Where Ipoh is concerned therefore, there should be no future difficulties with regard to the processing and issuing of Strata Titles.¹⁷ It is the writer's hope that once the problem of delay is eliminated there will be more applications for Strata Titles, in the State of Perak at least.

In Kuala Lumpur, there is a long delay between the sending in of an application and the issue of Strata Titles. Ten years have elapsed since the first application was made and there is still no issue of Strata Titles.¹⁸ Developers are put off by such delays. In fact, the developers as we shall see later are taking a "wait and see" attitude. Therefore, it is not surprising that so far there has been only one application for Strata Titles in Kuala Lumpur.

The frustration of the lawyer and his client, the purchaser, in the face of such delays, has been voiced by V.C. George. He writes:

¹⁷ Interview with Encik Ahmad Salim bin Haji Omar, on March, 1976, at the Ipoh Land Office.

¹⁸ The applicant was Kuala Lumpur Props. Ltd.

"The lawyer (and his client) is left frustrated since Strata Titles cannot be obtained. The owners of these high rise buildings have been placed in the happy position of calling the tune. Only they can provide the financing to enable the intending purchaser of floor space in a high rise building to purchase the floor space. This has resulted in developers insisting on terms and conditions for the purchase of space which if the purchaser had an alternate source of financing he would never have tolerated."¹⁹

and he continues on to explain the plight of the purchaser:

"I have seen an agreement where the vendor has the right to resell the area though 90% of the purchase price has been paid should the purchaser be late in paying the annual management fees"¹⁹

and the problem he faces:

"Another obvious problem is the inability to make use of the immovable assets for credit purpose. You could go to a bank with your \$100,000.00 detached house in Petaling Jaya and raise a loan of say \$60,000.00 but not a cent with your \$250,000.00 shop lot in a high rise building."¹⁹

¹⁹ George, V.C., Insaf, The Journal of the Bar Council, Vol. VIII, No. 2, August/September 1975, p. 9.

The above shows that the purchasers of flats or office suites or shop lots in a multi-storey building are put in a most unenviable position because they cannot obtain Strata Titles. They are put at the mercy of the developers who have stronger bargaining powers and hence, are able to dictate terms favourable to them but not favourable to the purchasers.

4. DELAY IN THE SURVEY DEPARTMENT

The delay in the issue of Strata Titles is also due to the delay in the preparation of a certified plan by the Survey Department in accordance with Section 155(1)(b). In Kuala Lumpur, the application for Strata Titles was approved by the State Director of Lands and Mines on 12th June, 1969. It was then sent to the Survey Department but it was not until 10th October, 1975, that a certified plan was prepared. There was a delay of six years.

5. IGNORANCE AS TO CONCEPT OF STRATA TITLES

Prior to 1965 there were no Strata Titles. In 1965, the National Land Code,²⁰ was passed containing provisions for Strata Titles. But those developers who were not advised by lawyers did not know of the existence of the provisions for Strata Titles in the National Land

²⁰ Act No. 56 of 1965.

JAN 1976

Code, 1965.²¹ Only those developers who had lawyers acting on their behalf were fortunate in that the lawyers were aware that the buildings (multi-storey buildings) could be subdivided and separate Strata Titles issued for the individual parcels or units.²² Most of the purchasers although they insisted on having their names on the title were ignorant that they could as the new flatproprietors, each hold their own Strata Title. Consequently, a large majority of sales agreement make no provisions for Strata Titles. The developer has thus no legal obligation to apply for Strata Titles.

In one case however, the sales agreement did not contain provisions for the application by the developer for Strata Titles. It merely contained provisions for the sale and transfer of an undivided share. But while the developer still held all the titles to the separate lots, the purchasers of the undivided shares requested him (i.e. the developer) to apply for subsidiary titles and he accordingly did. The developer had first to apply for the amalgamation of the separate lots into one lot again so as to comply with Section 151(1)(a), i.e. the area of the ground on which the building to be subdivided stands must

²¹ Act No. 56 of 1965.

²² Surprisingly however, the first application in Ipoh and in Kuala Lumpur were made by surveyors not lawyers on behalf of the developers.

be at least 5,000 sq. feet.

6. LAWYERS AND DEVELOPERS TAKE A "WAIT AND SEE" ATTITUDE

So far there has been no management corporation which has been set up pursuant to Section 357(1) and which has been seen to function. Lawyers and developers can only wait and see what happens once such a management corporation is set up. In Kuala Lumpur, no application has been successfully dealt with so far. Lawyers who handle housing matters for private developers are not sending in any applications for Strata Titles until the one and only application proves successful. They too have doubts as to whether Strata Titles can be successfully implemented here.

7. SCEPTISM AS TO THE WORKABILITY OF STRATA TITLES

In West Malaysia, people who live in flats are mainly from the lower income group although it must be remembered that there are also a few luxury flats and some flats that cater for the middle income group. Where luxury flats are concerned, very little difficulty need arise since the proprietors can even afford to engage lawyers to represent them. Proprietors of middle class flats may have some difficulty in organising themselves but the disputes will not be as numerous as among those who are living in the low cost flats.

The occupiers of the low-cost flats take an indifferent and cavalier attitude towards the formation of a management corporation. They are interested solely in getting their Strata Titles which mean a perfect guarantee of security for them. But that is as far as their interest goes. They either do not understand or refuses to understand the need for a management corporation. "Common property" does not mean very much to them, Therefore, they are reluctant to contribute to the maintenance of the common property. They are only concerned with individual parcels or dwelling units. They are distrustful of the good intentions of the management corporation. This is especially so when it comes to the paying of contributions for the maintenance of the common property. They entertain unfounded fears that the management corporation is out to cheat them and thus are likely to refuse to pay.²³

In view of such apathy, people are sceptical as to whether Strata Titles can be successively implemented here. Developers prefer to sell undivided shares and wash their hands entirely off the whole thing once the sales are completed. Their reasons are that they have to maintain the common property (even though they are paid a service

²³ Interview with Miss K.C. Chin, on March 1976, at the office of Yeap & Yeap, Advocates & Solicitors, Ipoh.

by each subsidiary proprietor in addition to the contribution which he has to pay towards the maintenance of the common property it is sometimes difficult to collect these from him) and if there are provisions for Strata Titles, until the Strata Titles are issued and actually transferred to the purchasers, they as the original proprietors of the land on which the building stands are responsible for the rent, assessments and they are answerable to the Local Authority. The normal practice is for the developers to incorporate into the sales agreement a term stating that if the purchaser fails to pay the service charge or his contribution or his share share of the rent, rates and assessments to the developer, the latter shall have the right to resell his parcel.