

CHAPTER V

SUGGESTED AMENDMENTS TO THE NATIONAL LAND CODE¹

During the meeting of the National Land Council held on 11th June, 1976,² the Deputy Prime Minister, Dr. Mahathir Mohamad, who presided over the meeting stated that although there were certain provisions under the National Land Code, 1965³ for the issue of Strata Titles, certain modifications needed to be made to the Code to solve the problems relating to the management of common property, such as the maintenance of lifts, and provisions for fire-fighting equipment.

No law, it is submitted is a hundred percent fool-proof. There will be certain shortcomings and inadequacies which can only be discovered through time because it is impossible for the draftsman, when drafting the Code, to provide for all kinds of contingencies which may arise in the future. In view of the inadequacies existing in the present law relating to Strata Titles, the writer is of the opinion that the National Land Code, 1965,⁴ needs to be amended.

¹Act No. 56 of 1965.

²The Straits Times, 12th June, 1976, p. 1.

³Act No. 56 of 1965.

⁴Ibid.

The writer suggests that the following amendments be made to the National Land Code, 1965:

- 1. The Act is hereby amended by inserting a new subsection immediately after section 151 -

"(2A) Notwithstanding the provisions in subsection (2), a local authority or a body incorporated under any written law, being the proprietor of the subdivided building or buildings, may apply to the State Director for the subdivided building or buildings to be excluded from the operation of Part Twenty-five.

Exclusion of operation of Part Twenty-five.

Provided that the State Director may, after consultation with the local authority or the body incorporated under any written law being the proprietor of the subdivided building or buildings, by a notification in the Gazette, declare that Chapter 5 shall cease to apply to such subdivided building or buildings."

- 2. Subsection (3) of section 155 is substituted by the following new subsection -

"(3) For the purposes of the preparation of any plan, the common boundary of any

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parcel of a building with any other parcel shall, except in so far as it may have been otherwise provided in the relevant storey plan, be taken to be the centre of the floor, wall or ceiling, as the case may be, and the common boundary of any parcel with any part of the building which is not included in any of the parcels shall, except in so far as it may have been otherwise provided in the relevant storey plan, be taken to be the outer surface of the wall."

3. Section 355 is hereby amended by inserting immediately after "the common property" the following new definition -

"initial period" means the period commencing on the day on which the management corporation is constituted and ending on the day on which there are proprietors of the subject of the subdivision scheme concerned, other than the original proprietor, the sum of whose share units is at least one-third of the aggregate share-units."

REPRODUCED FROM THE ORIGINAL DOCUMENT

4. Section 357 is hereby amended -

(a) by inserting immediately after the word "of" appearing in the third line of subsection (1) thereof the words "the subsidiary proprietor or";

(b) by inserting immediately after subsection (2) thereof the following new subsection -

"(2A). The management corporation may -

(a) sue and be sued on any contract made by it;

(b) sue and be sued in respect of any matter affecting the common property; or

(c) be sued in respect of any matter connected with the parcel for which the subsidiary proprietors are jointly liable."

(c) by inserting immediately after subsection (4) thereof the following new subsections -

"(5) If the management corporation

makes default in complying with any requirements of, or duties imposed upon it by, any of the provisions of the Seventh Schedule to this Act the management corporation and every member of its council, or every subsidiary proprietor, who is knowingly a party to the breach or default, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand dollars.

(6) Any member of the management council and any subsidiary proprietor who makes default in complying with any of the provisions of the Seventh Schedule or makes default in complying with any requirements or duties imposed upon it by the said Schedule is guilty of an offence and is liable on conviction to a fine, not exceeding one thousand dollars."

5. The Act is hereby amended by inserting after the section the following new section 357A:-

"357A. (1) A management corporation shall not amend, add to or repeal the by-laws in such a manner that a right is conferred or an obligation is imposed on one or more, but not all, proprietors or in respect of one or more, but not all, parcels during the initial period: **Restrictions imposed on management corporation during the initial period.**

Provided that if the management corporation wishes to make a by-law conferring on any proprietor the exclusive use of a specified portion of the common property for the purpose of authorising that proprietor to park a vehicle on their part of the common property, it may make an application to the State Director seeking its approval to make the by-law.

(2) A management corporation shall not borrow moneys on the security of a charge on the common property during the initial period.

(3) Without prejudice to any other remedy available against the original proprietor, when a management corporation

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(3) Without prejudice to any other remedy available against the original proprietor, when a management corporation

contravenes any of the restrictions imposed upon it during the initial period the original proprietor is liable in damages for any loss suffered by the management corporation or any proprietor.

(4) (i) The original proprietor shall be under a duty to convene the first annual general meeting of the management corporation within one month after the expiration of the initial period.

(ii) If the original proprietor fails to convene and hold the first annual general meeting of the management corporation within the specified period, he is guilty of an offence and liable on conviction to a fine of one thousand dollars.

(5) Without prejudice to the provisions of subsection (4), if the original proprietor fails to convene and hold the first annual general meeting within the specified period, the State Director may on the application by the management corporation, a proprietor or a chargee of a parcel appoint by order a person to convene the first annual general meeting of the management corporation within such time as may be specified in that order.

(6) The original proprietor shall give a

written notice of the first annual general meeting to the management corporation not less than fourteen days before the meeting.

(7) The agenda for the first annual general meeting shall be as follows -

(a) to decide whether insurances effected by the management corporation should be confirmed, varied or extended;

(b) to decide whether any amounts determined as contributions to the management fund should be confirmed or varied;

(c) to determine the number of members of the council and to elect the council where there are more than three proprietors; and

(d) to decide whether the by-laws in force immediately before the holding of the meeting should be amended, added to or repealed.

6. The Act is hereby amended by inserting immediately after section 361 the following new section:-

"361A. (1) Where the Director is satisfied that the management corporation is not carrying out its duties or performing

Director
may take
over duties
of
corporation.

its business satisfactorily and he is of the opinion that certain duties must be carried out urgently or immediate action must be taken with respect to matters of concern to the management corporation and the subsidiary proprietors, the Director shall have the power to perform the duties of the management corporation until such time as an administrator shall be appointed.

(2) The expenses incurred by the Director for and on behalf of the management corporation shall be charged upon the management fund of the management corporation.

(3) When the Director has exercised the powers conferred upon him under this section he shall as soon as may be practicable notify the management corporation concerned or every member thereof or the person responsible for the management of the subdivided building and the common property."

7. Section 362 of the Act is substituted by the following -
- | | |
|---|-------------------------------------|
| <p>"362. If default is made in complying with any of the provisions of section 360, 363, 367 or 368, the management corporation and every member of its</p> | <p>Offences by the corporation.</p> |
|---|-------------------------------------|

Council who is a knowing party to the default is guilty of an offence and is liable on conviction to a fine not exceeding one thousand dollars."

8. Section 363 of the Act is hereby amended -

(a) by inserting immediately after subsection (3) the following new subsections -

"(4)(i) The management corporation or any subsidiary proprietor shall be entitled to apply to the Court for an order to enforce the performance of or restrain the breach of any by-law by any person or body bound to comply therewith and the Court may make such order against such person or body as it thinks fit.

(ii) The management corporation or any subsidiary proprietor shall be entitled to apply to the Court to recover from any person or body damages for any loss or injury to person or property arising out of the breach of any by-law and the Court may make such order against such person or body as it thinks fit.

(5)(a) Every occupier of a parcel; or

(b) Every subsidiary proprietor who

commits a breach of any of the by-laws in the Eighth Schedule or makes any default in complying with the provisions of the said by-laws is guilty of an offence and is liable on conviction to a fine not exceeding one thousand dollars."

(b) by renumbering the existing subsections (4), (5) and (6) to be the new subsections (6), (7) and (8) respectively.

9. Section 364 of the Act is hereby amended -

(a) by inserting immediately after paragraph (b) of subsection (3) the following new paragraph -

"(c) determine the amount of interest payable by a subsidiary proprietor in respect of late contributions which shall not exceed the rate of ten per cent per annum."

(b) by deleting subsection (4) and substituting the following -

"(4) On application by or on behalf of a person who is a subsidiary proprietor of a parcel or by or on behalf of a prospective purchaser of a parcel that is offered for sale or by or on behalf of the chargee or prospective chargee of a parcel, the

management corporation shall issue a certificate certifying -

- (a) the amount determined under subsection (3);
- (b) the time and manner of payment of the said amount; and
- (c) any part of the contributions which has been paid."

(e) by adding the following new subsection (4A) after the new subsection (4):-

"(4A) The certificate shall be conclusive evidence of the matters certified therein."

(d) by inserting immediately after subsection (5) the following new subsections:-

"(6) Where any contribution levied under subsection (3) remains unpaid after the expiry of a period of fourteen days from the date the management corporation has sent a written demand by registered post to a subsidiary proprietor of a parcel, the subsidiary proprietor of the parcel is guilty of an offence and is liable on conviction to a fine not exceeding one thousand dollars, and to a further fine not exceeding fifty dollars for each day the contribution remains unpaid after the conviction.

(7) For the purposes of subsections (5) and (6), "subsidiary proprietor" also includes the person for the time being receiving the rent of the parcel, whether as agent or trustee or as receiver, and who would receive the same if the parcel were let to a tenant."

10. The Act is hereby amended by inserting immediately after section 364 the following new sections:-

"364A (1) Where any contribution has been levied under subsection (3) of section 364 in respect of a parcel at any time before, on or after the date of the commencement of the National Land Code (Amendment) Act, 1976, and such contribution or amount remains unpaid on the expiry of a period of fourteen days after the management corporation has sent a written demand for the contribution or amount that contribution or amount, including any interest due thereon, shall constitute a charge on the parcel in favour of the management corporation upon lodgement of an instrument of charge by the management corporation with and the registration thereof by the Registrar.

Charge
over a
parcel.

(2) Upon registration of the instrument of charge by the Registrar -

(a) the management corporation shall, subject to the provisions of subsection (1), have the power of sale and all other powers relating to or incidental thereto as if such management corporation is a registered chargee; and

(b) the amount of contribution due (including any interest thereon) shall be subject to all statutory rights and charges of any public authority over the parcel and to all encumbrances registered or notified prior to the date of lodgement of the said instrument of charge.

(3) The management corporation shall not proceed under paragraph (a) of subsection (2) unless -

(a) a special resolution has been passed by the management corporation to have the

parcel sold;

- (b) a notice of the intended sale has been published once in one or more daily newspapers as approved by the Registrar;
- (c) during the period of six weeks after the date of such publication, no payment has been made for the amount of contribution including interest thereon due and the cost of publication specified in paragraph (b) of this subsection as well as any incidental charges; and
- (d) there is no legal action pending in court to restrain the management corporation from proceeding with the sale.

(4) Where a transfer of any parcel has been made by the management corporation in the exercise of its power of sale as a chargee pursuant to the provisions of subsection (3) and it is subsequently lodged with the Registrar for registration -

- (a) such transfer shall not be accepted for registration

unless there has been lodged
with the Registrar -

- (i) a certified true copy
of the special resolution
of the management corporation
authorising the exercise of
its power of sale with the
seal of the management
corporation affixed thereto
in the presence of two
members of the Council of
the management corporation;
- (ii) a copy of each of the
notice of the publication
specified in paragraph (b)
of subsection (3); and
- (iii) a statutory declaration
made by the members of the
Council of the management
corporation referred to in
sub-paragraph (i) jointly
stating that the
contribution and interest
thereon including all
necessary incidental charges
have not been paid and that
there is no legal action

pending in court to
restrain the management
corporation from proceeding
with the sale of the parcel;
and

(b) Neither the purchaser of the
parcel from the management
corporation nor the Registrar
shall be concerned to inquire
into the regularity or validity
of the sale or transfer.

(5) Where the management corporation has
wrongfully or otherwise exercised its power of sale
in contravention of the provisions of this section,
every member of the Council of the management
corporation present when the special resolution was
passed or in whose presence the seal of the
management corporation was affixed to the certified
true copy of the special resolution passed and
lodged with the transfer is guilty of an offence
and is liable on conviction to a fine not exceeding
five thousand dollars or to imprisonment for a term
not exceeding two years or to both fine and
imprisonment.

(6) Where an instrument of charge has been
registered against a parcel under this section, the

subsidiary proprietor of the parcel shall, upon payment of the amount of contribution due including all interest thereon and any necessary incidental charges, be entitled to an instrument of discharge executed and acknowledged by the management corporation as to the receipt of such payment, and upon registration of such instrument of discharge, or in the event of the management corporation refusing to execute a discharge, an order of court declaring that the parcel shall be discharged, the parcel shall be discharged.

(7) For the purpose of registration of a charge, discharge or transfer under this section, the Registrar may dispense with the production of the relevant duplicate subsidiary title.

(8) The provisions of this section shall be without prejudice to the rights and powers conferred on the management corporation by subsections (5) and (7) of section 364 to recover the contribution or amount due and all interest thereon including any legal costs and incidental charges necessarily incurred for the recovery of such contribution or amount in respect of any parcel as a civil debt from the subsidiary proprietor or his successor in title to, the parcel.

364B..(1) The payment of any amount lawfully incurred by the management corporation in the course of the exercise of any of its powers or functions or the carrying out of its duties or obligations shall be guaranteed by the persons who, for the time being and from time to time, are the members of the management corporation, or the member who is or the members who are the subsidiary proprietor or subsidiary proprietors of each parcel being liable under such guarantee only for such proportion of the money so incurred as the share unit of that parcel bears to the aggregate share units of all the parcels.

Expenses of the corporation to be guaranteed by its members.

(2) Where -

(a) by reason of any liability of a member or former member of the management corporation under subsection (1) that member or former member has, in respect of any matter under subsection (3) of section 364; and

(b) any other member or members of the management corporation has or have not discharged his or their liability under subsection (3)

of section 364,
 the member or former member referred to in paragraph (a) shall be entitled to recover from the member or members referred to in paragraph (b) in any court of competent jurisdiction, as a debt due to him from that member or those members, an amount not exceeding the amount by which the aggregate amount paid by him in respect of that matter exceeded the amount of the proportion for which he was liable in respect of the aforesaid matter, but no member referred to in paragraph (b) is liable to pay more than the amount remaining undischarged in respect of the same matter."

11. Part Twenty-five of the Act is hereby amended by inserting immediately after Chapter 4, the following new Chapter 5 -

"Chapter 5 - Subdivided Buildings.

374A. The provisions of this Chapter shall have effect once the Subsidiary Register in respect of a subdivided building under a Direction under subsection (2A) of section 151 has been made.

Applica-
 tion of
 Chapter
 5.

374B. In this Chapter, unless the context otherwise requires -

Interpreta-
tion.

"the proprietor" means, in relation to the subdivided building, the proprietor of the land immediately before the subdivision thereof.

374C. (1) It shall be the duty of the proprietor -

Duties and
powers of
proprietor.

- (a) to control, manage and administer the common property;
- (b) to keep the common property in good repair;
- (c) to pay the rent of the lot;
- (d) to insure the building to its replacement value against fire and to keep it so insured;
- (e) to effect such other insurance of the buildings as may be required by law; and
- (f) subject to any order made

by the Court under section 369,
to apply insurance moneys
received by it in respect of
damage to the building in
rebuilding and re-instating the
building, so far as it may be
lawful to do so; and to pay
the premiums on any policy of
insurance effected by it;

(2) The proprietor may -

(a) purchase, hire or otherwise
acquire movable property for
use by the subsidiary proprietors
in connection with their
enjoyment of the common
property; and

(b) do all things reasonably
necessary for the performance
of its duties under this
Chapter.

(3) The proprietor shall be deemed for the
purpose of effecting any insurance under paragraph
(d) or (e), to have an insurable interest in the
building to its replacement value.

(4) A policy or insurance taken out by the proprietor in respect of the building shall not be liable to be brought into contribution with any other policy of insurance except another policy taken out in respect of the same building.

374D. (1) The by-laws contained in the Eighth Schedule shall have effect in relation to every subdivided building with the following modification -

By-laws
for
regulation
of the
building.

the word "proprietor" shall be substituted for the word "corporation" and there shall be deleted the entire definition of "the proprietor" in subsection (1) of section 1.

(2) The by-laws contained in the Eighth Schedule shall bind the subsidiary proprietors and the proprietor to the same extent as if they constitute properly executed agreements -

(a) on the part of the proprietor with each subsidiary proprietor;
and

(b) on the part of each subsidiary proprietor with every other subsidiary proprietor and the proprietor;

to observe and perform all the provisions thereof.

374E. The proprietor may authorise a company incorporated under the provisions of the Companies Act to exercise his functions, duties and powers but he may in his absolute discretion revoke any authority granted to such company without assigning any reason therefor.

Company to take over duties, functions and powers of the proprietor.

374F. (1) The proprietor shall establish and maintain a fund for the control, management and administration of the common property, payment of any rent, rates, premiums of insurance and the discharge of any other obligations.

Management fund.

(2) For the purposes of subsection

(1) the proprietor may -

(a) determine from time to time the amounts to be raised;

(b) raise amounts so determined by levying contributions on

the subsidiary proprietors in proportion to the share units of their respective parcels; and
(c) by an action in any court of competent jurisdiction, recover from any subsidiary proprietor any sum of money expended for rents, rates, premiums, maintenance or repairs done.

(2) Subject to the provisions of subsection (5),

(i) any contribution levied under the provisions of subsection (2) shall be due and payable if the proprietor or the company, as the case may be, serves a written notice on the subsidiary proprietor.

(ii) The contribution may be recovered by the proprietor or the company in an action in any court of competent jurisdiction at the time when the notice was served and at the time when the action is instituted, both jointly and severally.

(4) A certificate of the proprietor shall be conclusive evidence of the amount that may be due to him under the provisions of subsection (1) of subsection (3).

(5) The proprietor shall on the application of any subsidiary proprietor of a parcel or any person authorised in writing by the subsidiary proprietor certify -

(a) the amount determined as the contribution of the subsidiary proprietor;

(b) the manner in which that contribution is payable;

(c) the extent to which his contribution has been paid by the subsidiary proprietor;
and

(d) the amount of any rates paid by the proprietor and not recovered by him,

and such certificate shall be conclusive evidence of the matters certified therein.

374G. (1) No dealing shall be capable of being effected with respect to any parcel and interests therein without the prior written consent of the proprietor.

Restrictions
on
dealings.

(2) Any assignment, transfer, charge, lease or dealing in any manner whatsoever with any parcel without the prior written consent of the proprietor shall be null and void.

(3) No lien by deposit of the title of any parcel shall be capable of being created as security for a debt in favour of any person and no caveat in support of any such lien shall be capable of being registered under the provisions of this Act.

(4) No parcel shall vest in the Official Assignee on the bankruptcy of the subsidiary proprietor thereof.

(5) No parcel shall be attached in execution of a decree or order of any court.

(6) Every trust or alleged trust, whether such trust be express, implied or

constructive, which purports to be created in respect of a parcel by the subsidiary proprietor thereof shall be null and void and incapable of being enforced by any court.

374H. (1) Subject to this section and the other provisions of this Chapter, a subsidiary proprietor shall have -

Rights of subsidiary proprietor in his parcel and in the common property.

(a) in relation to his parcel, the powers conferred by the other parts of this Act on a proprietor in relation to his land; and

(b) in relation to the common property, the right of user which he would have if he and the other subsidiary proprietors were co-proprietors thereof.

(2) No rights in the common property shall be disposed of by a subsidiary proprietor except as appurtenant to a parcel; and any disposition of a parcel by a subsidiary proprietor shall without express reference include a like disposition the

rights in the common property which are appurtenant to the parcel.

(3) The provisions of the Ninth Schedule shall have effect in relation to the division and amalgamation of parcels.

374I. (1) There shall be implied a right of support and a right of service in favour of and against each subsidiary proprietor.

Rights of support, service and shelter.

(2) Each subsidiary proprietor shall be entitled to have his parcel sheltered by all such parts of the subdivided building as are capable of affording shelter and may, for the purpose of replacing, renewing or restoring any such shelter, enter upon the common property or any other parcel.

(3) The rights and obligations mentioned in subsections (1) and (2) shall be effective without memorial or notification in the Subsidiary Register and other ancillary rights and obligations as are reasonably necessary to make them effective are implied.

(4) In this section -

"right of support" means a right to subjacent and lateral support by the common property and by every other parcel capable of affording support; and

"right of service" means rights to the passage or provision of water, sewage, drainage, gas, electricity, garbage, artificially cooled or heated air and other services (including telephone, radio and television services) through or by means of pipes, wires, cables or ducts."

THE PROPOSED AMENDMENTS HAVE THE FOLLOWING CONSEQUENCES:

- (a) They add a new Chapter, namely Chapter 5, to Part Twenty-five, containing special provisions for government low-cost flats and flats built by a local authority or a body which is incorporated under a written law.
- (b) They add a new section to Section 357, namely, Section 357A, containing provisions for the imposition of certain duties on the original proprietor, the most important being the duty to establish a viable management structure before he leaves the subdivision or strata scheme.

- (c) They make provisions for the imposition of fines in the event of a breach of certain duties imposed by the National Land Code, 1965.
- (d) They contain some minor amendments to a number of existing provisions.

(a) THE NEW CHAPTER 5

The new Chapter deals with the control, administration and management of and the rights attaching to government low-cost flats and flats built by a body which has been incorporated under a written law such as U.D.A., M.A.R.A., S.E.D.C's., etc. In order for the new Chapter to apply, the local authority or the statutory body concerned which is the registered proprietor of the land on which the building stands must make an application to the State Director of Lands and Mines under Section 151(2A), and upon the direction of the State Director the provisions of Chapter 5 will apply.

Under the provisions of Chapter 5, there will not be constituted a management corporation upon the subdivision of the building. Instead, under Sections 374C and 374F, the local authority or the statutory body as the case may be, is given powers similar to those given to the management corporation and it will be responsible for the administration, management and

maintenance of the common property. Although the new Chapter retains the general concept of proprietorship and management of a subdivided building that has been laid down in the existing chapters to Part Twenty-five, there are important differences, one of which is the restrictions that have been imposed upon the subsidiary proprietor's rights in relation to his parcel. He cannot enter into any dealings affecting his parcel unless he has obtained the written consent of the local authority or the statutory body concerned.

The restrictions are found in Section 374C. They are aimed firstly, at ensuring that the government policy of providing home-ownership for the low income group will not be defeated. If it were not so, as soon as a person has been allocated a flat he might subsequently sell it to another or he might charge it or create a lien over it as security for a loan and should he fail to repay his loan and the chargee or lien-holder levies execution on the flat, the government's policy of providing home-ownership will be defeated.

Secondly, in the resettlement of squatters, the "professional squatter" poses a problem. A "professional squatter" is a squatter who makes it his business or profession to defraud the government by posing as a

squatter on state land and once he is compulsorily resettled he sells or leases the flat, land or house and goes back to squatting and the whole process is repeated. In Selangor, the Selangor State Development Corporation protects itself against professional squatters by making periodic and unexpected visits to the flats to check whether the flats have been sub-let to other tenants.⁶ The restrictions serve as a protection against professional squatters since subsidiary proprietors cannot assign, transfer, charge or lease their flats or otherwise deal with their flats unless they obtain prior consent in writing of the local authority or statutory body concerned.

When the government allocates flats to members of the public, the allocation is in line with its policy of restructuring society. In other words, although every one is entitled to apply for a government flat preference will be given to Malays so as to attract them to the urban areas. This is because a large proportion of the Malay population is concentrated in the rural areas while the Chinese form the bulk of the urban population. The urbanisation of the rural Malays will result in the restructuring of society. The third aim

⁶ Interview with Encik Abdullah Sani bin Mohamed Nor, on April, 1976, at the Housing Division of the Selangor State Development Corporation, Petaling Jaya.

of the restrictions is therefore to ensure that the government's policy of restructuring society so as to produce a more balanced society will not be defeated since Malay subsidiary proprietors may be refused consent when they deal with non-Malays.

Chapter 5 allows the local authority or statutory body to retain their influence over the flats. The proviso to Section 151(2A) is important because it provides that if the local authority or statutory desires that the provisions of Chapter 5 shall cease to apply to the subdivided building, it shall apply to the State Director of Lands and Mines who will direct that the provisions of Chapter 5 shall no longer apply to the subdivided building. The proviso envisages a situation where the local authority or statutory body is of the opinion that the flat-dwellers are able to organise themselves into an effective management corporation to administer, manage and maintain the common property and that they are able to appreciate the advantages of home-ownership not to misuse their rights of disposal attaching to their parcels so as to defeat the government policies of conferring home-ownership, resettlement of squatters and the restructuring of society. If there is no such application, Chapter 5 will continue to apply even though the local authority or the statutory body has transferred all the Strata titles to the new subsidiary proprietors.

(b) THE NEW SECTION 357A

The original proprietor as defined in Section 355 makes no reference as to who was the builder, developer or entrepreneur of the building which is to be subdivided. It refers only to the registered proprietor of the land at the time of the registration of the subdivision of the building.

In Australia, many strata schemes which came into existence under the Conveyancing (Strata Titles) Act, 1961⁷ floundered in chaos for varying periods of time until some one took the initiative to convene a meeting of the management corporation or body corporate for the purpose of organising the scheme and getting it under way. On occasions the developer refused to co-operate in this organisation, and in some cases where he held majority voting rights he exercised those rights against any attempt to organise the scheme, and that situation continued to exist until such time as incoming proprietors were in a position to outvote the developer and proceed to organise levies, constitute the council, etc.⁸ The 1973 Strata Titles Act which replaced the 1961

⁷Act No. 17 of 1961 (as amended by Act No. 56 of 1961).

⁸Collins, D.A., Strata Title Units in New South Wales, Sydney, Butterworths, 1974, p. 54.

⁹Citation unavailable at time of writing.

Conveyancing (Strata Titles) Act¹⁰ is aimed at imposing on the original proprietor a duty to leave behind him a viable management structure before he departs from the scheme.

In the previous chapter the writer has dealt with the problems faced by subsidiary proprietors of subdivided buildings. In Ipoh where the first set of Strata Titles were issued in 1972 and where they have already been transferred to the new subsidiary proprietors, a considerable period of time has elapsed and yet no viable management structure has been set up. The reason is that as the law stands today, there is no duty placed on the original proprietor to establish a viable management structure before he leaves the subdivision or strata scheme.

The new Section 357A is aimed at imposing on the original proprietor such a duty. This aim is to be implemented in principally two ways. Firstly, the section contains restrictions on what the management corporation may do during the "initial period" and secondly, the original proprietor is required to manage the subdivided building until such time as the management structure has been established, which would generally be at the first

¹⁰Act No. 17 of 1961 (as amended by Act No. 55 of 1961).

annual general meeting of the management corporation.

The amended Section 355 defines the "initial period". In many building projects which are designed for the purpose of becoming a strata scheme on completion, the proposed parcels in those buildings are forward sold prior to completion of the building, so that upon registration of the subdivision of the building, the developer is in a position to settle virtually immediately under his contract of sale and arrange transfer of the parcel to the purchaser. In these cases the initial period may expire within a week or two of the registration of the subdivision. But in many other cases where the parcels are slow to sell or where the purchasers have not paid up the whole purchase price of the parcels, the initial period may extend over a considerable period of time. However, once there are persons registered as proprietors (other than the original proprietor) who hold in the aggregate at least one-third of the total share units, then the initial period will expire.

Section 357A(1) prevents an original proprietor from making, during the initial period, by-laws conferring exclusive rights over common property in favour of a particular parcel or proprietor, unless those rights are conferred equally on all proprietors or all parcels. In Australia in the past, developers have conferred exclusive rights over portions of the common property for the

purpose of granting to the purchaser of a parcel an area on which he may park a motor vehicle. In some schemes these rights were conferred in a haphazard manner or without regard to the future convenience of persons using the common property.¹¹ The new section is intended to prevent a similar undesirable state of affairs from occurring in subdivision schemes in West Malaysia.

The proviso to Section 357A(1) allows the developer to apply to the State Director of Lands and Mines for permission to grant exclusive rights over portions of the common property for the purpose of granting to the purchaser of a parcel an area on which he may park a motor vehicle. However, in exercising this power the State Director of Lands and Mines should consider whether the proposed parking arrangement will be detrimental to the effective and beneficial use of the common property in the future.

Section 357A(2) imposes a further restriction on the management corporation that it may not borrow moneys by giving a charge on the common property as security for the loan. In essence the restriction is to curb the powers of the original proprietor because unless and until the

¹¹ Collins, D.A., Strata Title Units in New South Wales, Sydney, Butterworths, 1974, p. 55.

initial period expires the original proprietor is in fact the management corporation and if he is allowed to charge the common property, adverse consequences will result if he fails to repay the loan.

Section 357A(3) provides a remedy for the subsidiary proprietors should the management corporation commit any breach of the restrictions. It allows them to recover from the original proprietor any loss which they have suffered as a result of the default of the original proprietor.

Under Section 357A(4) the original proprietor has to convene and hold the first annual general meeting of the management corporation on pain of a fine of one thousand dollars. If he fails to do so the State Director of Lands and Mines is empowered by Section 357A(5) to appoint someone else to carry out his duty. But this does not affect in any way his fine of one thousand dollars. One important point to note here is that notwithstanding the fact that the original proprietor may have transferred all the parcels to the purchasers and thus is no longer a proprietor in respect of any of the parcels, he must still within one month after the expiration of the initial period convene the first annual general meeting.

The last two sub-sections of Section 357A make provisions for written notice to be given to the subsidiary

proprietors of the first annual general meeting and for the matters which must be discussed during the meeting.

(c) PROVISIONS FOR FINES

The National Land Code, 1965¹² sets out a number of duties which the management corporation and the subsidiary proprietors have to perform and these duties are set out in positive terms. But the Code seldom makes provisions for the imposition of fines where the duties have not been complied with. The new provisions are to punish any default or any non-compliance of some of the duties laid down in the Code.

Section 357 as amended provides that if the management corporation fails to comply with any requirements of, or duties imposed upon it by any of the provisions of the Seventh Schedule it shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand dollars. If any member of the Council or any of the subsidiary proprietors is knowingly a party to the breach or default, he shall also be guilty of an offence and on conviction shall be liable to a similar fine.

The Seventh Schedule contains provisions relating to the composition of the Council of the management

¹² Act No. 56 of 1965.

corporation, the election of the Council members and their tenure of office, the meetings of the Council, the procedure to be followed at Council meetings, the delegation of the powers and duties of the Council, the holding of annual general meetings and extraordinary general meetings, the procedure to be followed during such meetings, the manner of voting and the voting rights of the subsidiary proprietors. Section 8(1) requires the management corporation to hold an annual general meeting for the consideration of accounts, the election of the Council and the transaction of such other business as may arise. Where the first annual general meeting is concerned, the management corporation, under Section 8(2) is under a duty to hold the first annual general meeting within three months after the establishment of the corporation.

Under Section 3 of the Seventh Schedule the Council of the management corporation has to meet at such times and places at such intervals as it thinks fit. Under Section 7(1) the Council must keep minutes of its proceedings and of general meetings and under Section 7(3) the Council is under a duty to prepare accounts for each annual general meeting relating to all moneys of the corporation and the income and expenditure of the corporation.

The effect of the new sub-section (5), is that if the management corporation fails to hold an annual

general meeting as required by Section 8(1) of the Seventh Schedule or if it fails to hold its first annual general meeting within the prescribed period as set out in Section 8(2), the management corporation can be prosecuted and charged for an offence which on conviction carries a penalty of a fine which may amount to as much as one thousand dollars. If any of the Council members or any of the subsidiary proprietors knowingly took part in the act of default committed by the management corporation he is to be similarly fined if convicted.

Section 362 as amended provides that if the management corporation makes any default in complying with any of the provisions of Sections 360, 363, 367 and 368 the management corporation and every member of the Council who is a knowing party to the default is guilty of an offence and if convicted shall be fined a sum not exceeding one thousand dollars. The present Section 362 only punishes certain defaults on the part of the management corporation in relation to its duties under Section 360. For example, under the present Section 362 if the management corporation fails to effect any insurance of the building against fire or other risks it will not be subjected to any penalty. But under the new Section 362 the management corporation is bound, inter alia, to insure the building to its replacement value against fire and to keep it so insured and also to effect

such other insurance of the building as may be required by law on pain of a fine not exceeding one thousand dollars.

Section 363 as amended provides that should a subsidiary proprietor commit a breach of any of the by-laws contained in the Eighth Schedule he is liable to pay a fine not exceeding one thousand dollars on his conviction. In this way, the subsidiary proprietors will not treat the by-laws contained in the Eighth Schedule lightly and by complying with the by-laws they benefit ultimately since the by-laws are for the regulation of of the subdivided building. In other words, if the subsidiary proprietor contravenes Section 6 of the Eighth Schedule by using his parcel for gambling purposes so as to cause nuisance to any other subsidiary proprietor or his family or if he uses as fuel any substance or material which may give rise to smoke or fumes or noxious smells so as to cause nuisance to any other subsidiary proprietor or his family or if he uses or stores upon his parcel an inflammable chemical, liquid or gas or other inflammable material, other than chemicals, liquids, gases or other material used or intended to be used for domestic purposes, so as to cause danger to any other subsidiary proprietor or his family, he can be prosecuted and if convicted of the offence he is liable to pay a fine which may be as much as one thousand dollars.

The subsidiary proprietors are forced therefore to comply with the provisions of the Eighth Schedule and thus the number of disputes or complaints can be kept to a bare minimum.

Section 364 as amended provides that if a contribution has been levied and it remains unpaid although fourteen days have elapsed from the date the management corporation has sent a written demand by registered post to the subsidiary proprietor who is in default, the latter shall be guilty of an offence and if he is convicted he is liable to a fine which shall not exceed one thousand dollars. The amendment also provides that for each day the contribution remains unpaid after he has been convicted the subsidiary proprietor shall be subjected to a further fine which shall not exceed fifty dollars.

Lastly, a new section, namely Section 364A is incorporated into the Code to provide that in cases where contributions have still not been paid although a written demand has been sent to the subsidiary proprietor in default, the management corporation shall be entitled to have a charge over the subsidiary proprietor's parcel and it shall enjoy the power of sale and all other powers relating to or incidental to the charged property as if it was a registered chargee. But Section 364A also provides that the management corporation can only exercise its power of sale if all the requirements set out in sub-

section (3) have been satisfied. In order that such a drastic power should not be made the subject-matter of any abuse the management corporation and every member of the Council who was present at the time the special resolution under paragraph (a) of the sub-section was passed shall be guilty of an offence which carries not only a fine of five thousand dollars or less but also imprisonment of two years or less, in the event that the management corporation has exercised its power of sale in contravention of the provisions of the section. The management corporation and every member of the Council may also be punished with both fine and imprisonment.

(d) SOME MINOR AMENDMENTS

Sub-section (3) of Section 155 is amended to provide that only where there is a party wall, floor or ceiling separating two parcels will the common boundary be the centre of the wall, floor or ceiling. In all other cases where there is a wall separating a parcel and the common property the common boundary will be the external surface of the wall.

Section 357 as amended deals with the rights and liabilities of the management corporation in respect of contracts with third parties or any matter affecting the common property or any matter connected with the parcel for which the subsidiary proprietors are jointly liable.

The new Section 361A gives power to the State Director of Lands and Mines to take over the duties of the management corporation if he is satisfied firstly that the management corporation is not carrying out its duties or performing its business satisfactorily and secondly if in his opinion certain duties must be carried out urgently or immediate action must be taken with respect to matters of concern to the management corporation and the subsidiary proprietors.

The new sub-section (4) to Section 364 makes it compulsory for the management corporation to issue to a subsidiary proprietor, prospective purchaser, chargee or prospective chargee a certificate certifying the amount of contribution levied on that particular parcel, the time and manner of payment and what part of it has already been paid, upon the application by the subsidiary proprietor, prospective purchaser, chargee or prospective chargee. Under the new sub-section (4A) the certificate is conclusive evidence of the matters stated in it.

Lastly, the new Section 364B provides that the expenses of the management corporation in the carrying out of its duties or in the exercising of its powers or functions is to be guaranteed by its members. The amount which each member has to pay is calculated on the basis of such proportion of the money so incurred as the share unit of that parcel bears to the aggregate

share units of all the parcels.

In Singapore, the Land Titles (Strata) Act¹³ which was passed in 1967 (i.e. two years after our National Land Code, 1965¹⁴ was passed) has been amended by the Land Titles (Strata) (Amendment) Act, 1976¹⁵ after the Singapore Government had realised that there were certain shortcomings in the 1967 Act. The 1976 Amendment Act aimed at making the system of Strata Titles more workable. In Australia, too, a number of changes have been effected by the repealing of the 1961 New South Wales Conveyancing (Strata) Act¹⁶ and the enacting of the 1973 Strata Titles Act¹⁷ and the 1974 Strata Titles (Amendment) Act.¹⁸ The 1974 Act contained transitional provisions for applying the 1973 Act to strata schemes registered before the commencement of the 1973 Act.

¹³Act No. 41 of 1967.

¹⁴Act No. 56 of 1965.

¹⁵Act No. 4 of 1976.

¹⁶Act No. 17 of 1961 (as amended by Act No. 55 of 1961).

¹⁷Citation unavailable at time of writing.

¹⁸Citation unavailable at time of writing.

In West Malaysia, we have begun to realise that unless the National Land Code, 1965¹⁹ is amended, the system of Strata Titles will not be able to function successfully here. The writer is relieved that our present state of affairs will be remedied shortly when Parliament amends the National Land Code, 1965²⁰ as evidenced by the statement of the Deputy Prime Minister, Dr. Mahathir Mohamed during the meeting of the National Land Council.²¹

¹⁹ Act No. 56 of 1965.

²⁰ Ibid.

²¹ The Straits Times, 12th June, 1976, p. 1.