

CONCLUSION

The writer has attempted in the preceding chapters to present a coherent picture of the conditions prevailing in West Malaysia before and after the introduction of Strata Titles. Prior to 1965, many devices were resorted to by developers of high rise buildings to meet demands from the public for ownership rights. The sale of an undivided share was the most popular device because it came nearest to the conferring of actual home-ownership, as opposed to the lease and the home-unit company system which only conferred an interest in property of a limited nature. In view of the decision in Jenkins v. Harbour View Courts Ltd.,¹ home-unit companies in West Malaysia are placed in a dilemma. Unless the Companies Act, 1965² is amended by adding a new section equivalent to Section 80A of the New Zealand Companies Act, 1955³ any lease which a home-unit company grants to its shareholder of one of its flats amounts to a return of capital and is ultra vires. But expenses have been incurred in floating the company and the lessees of the company's flats have paid the value of their shares.

On 1st of January, 1966, the National Land Code,

¹ [1966] 1 N.Z.L.R. 1.

² Act 125.

³ Act No. 63 of 1955.

1965⁴ became law. It introduced a concept which was formerly regarded as totally alien, namely, the concept of Strata Titles. The relevant provisions governing Strata Titles in the National Land Code, 1965⁵ are modelled on the provisions of the New South Wales (Strata Titles) Act, 1961⁶ which went one step further than the Victoria Transfer of Land (Stratum Estates) Act, 1960⁷. The latter provided for the formation of a "service company" and the entering into of a "service agreement" between the service company and the proprietors of the "stratum estate". But the former dispensed with the necessity of incorporating a company and provided for the automatic creation of a body corporate (or management corporation) consisting of all the subsidiary proprietors upon the subdivision of the building. The concept of Strata Titles is based on the fundamental principle that land can be vertically and horizontally divided to enable the issue of separate titles to the separate individual units.

The National Land Code laid down the procedure which has to be followed before a building can be subdivided. Ten and a half years have elapsed since the

⁴Act No. 56 of 1965.

⁵Ibid.

⁶Act No. 17 of 1961 (as amended by Act No. 55 of 1961).

⁷Act No. 6646.

the National Land Code, 1965⁸ became law but unfortunately, the progress achieved by West Malaysia in this area of the law is very miserable compared to that achieved by Australia and Singapore. It is true that West Malaysia is a poor comparison for Australia since it was the pioneer in this field. But Singapore had their Land Titles (Strata) Act⁹ two years after the Malaysian Parliament passed the National Land Code, 1965¹⁰ and yet Singapore has achieved remarkable progress.

The writer has outlined clearly the advantages of Strata Titles which West Malaysians are precluded from reaping for the simple reason that as the law stands today the implementation of Strata Titles is clouded with problems. The government machinery is complete only in Ipoh. Elsewhere, it is still incomplete. Present provisions are inadequate especially in relation to the powers, duties, rights and liabilities of the management corporation. Government low-cost flats pose problems too. The government wants to retain their influence on the flats even after the flats have been transferred to the new occupants. There is the problem of delay in the issue of Strata Titles.

⁸ Act No. 56 of 1965.

⁹ Act No. 41 of 1967.

¹⁰ Act No. 56 of 1965.

All the problems combine together to cause scepticism and speculation among not only the members of the legal profession and the housing developers but also among the members of the State Development Corporations. The end result is that many assume a "wait and see" attitude.

The writer has therefore suggested a number of amendments to the National Land Code, 1965¹¹ which the writer considers necessary to render Strata Titles a reality rather than a mere possibility and to ensure that there will be a bright future for Strata Titles in West Malaysia. The proposed amendments fall into four categories: a new Chapter 5 containing provisions for government low-cost flats and flats built by a statutory body allowing both the government and the statutory body to retain their influence over the flats and restricting the rights of the subsidiary proprietors to transfer, assign, lease, charge or otherwise deal with their flats without the prior written consent of the government or the statutory body, as the case may be; a new Section 357A containing provisions restricting the powers of the management corporation during the "initial period" and making it compulsory for the original proprietor to establish a viable management structure before he leaves

¹¹ Ibid.

the subdivision scheme; provisions for the imposition of fines or imprisonment or both in cases where a duty has been imposed by the Code or by the by-laws contained in the Seventh and Eighth Schedules and it has not been complied with; and finally some minor amendments to a number of existing provisions such as the common boundary between two parcels or between a parcel and the common property and the civil rights and liabilities of the management corporation.

In addition to the amendments which the writer has suggested in the last chapter, the writer also feels that there should be further amendments to make provisions (similar to those of the New South Wales Strata Titles Act, 1973) for the settlement of disputes between one subsidiary proprietor and another or between the subsidiary proprietor or proprietors and the management corporation of a subdivided building by a Strata Titles Commissioner with a right of appeal to a Strata Titles Board having both original and appellate jurisdiction so as to reduce the burden of the courts which are currently being faced with a large backlog of cases and to provide quicker and cheaper means of settling disputes between participants in strata schemes. There should also be amendments to make the Collector the Chairman or a member of the Council of the management corporation of private flat schemes with supervisory functions to enable him to keep track of their activities.