

GATED COMMUNITIES IN MALAYSIA:
LEGAL AND SOCIAL IMPLICATIONS

ASNIDA BINTI MOHD SUHAIMI

DISSERTATION SUBMITTED IN FULFILMENT
OF THE REQUIREMENTS
FOR THE DEGREE OF MASTER OF LAWS (LL.M)



FACULTY OF LAW
UNIVERSITY OF MALAYA
KUALA LUMPUR

2009

UNIVERSITI MALAYA

ORIGINAL LITERARY WORK DECLARATION

Name of Candidate : ASNIDA BINTI MOHD SUHAIMI (I.C/Passport No: 801228-03-5526)

Matric No : LGA 040070.

Name of Degree : MASTER OF LAWS (LL.M)

Title of Dissertation : Gated Communities in Malaysia: Legal and Social Implications
("this Work")

Field of Study : LAND LAW

I do solemnly and sincerely declare that:

- (1) I am the sole author/writer of this Work;
- (2) This Work is original;
- (3) Any use of any work in which copyright exists was done by way of fair dealing and for permitted purposes and any excerpt or extract from, or reference to or reproduction of any copyright work has been disclosed expressly and sufficiently and the title of the Work and its authorship have been acknowledged in this Work;
- (4) I do not have any actual knowledge nor do I ought reasonably to know that the making of this work constitutes an infringement of any copyright work;
- (5) I hereby assign all and every rights in the copyright to this Work to the University of Malaya ("UM"), who henceforth shall be owner of the copyright in this Work and that any reproduction or use in any form or by any means whatsoever is prohibited without the written consent of UM having been first had and obtained;
- (6) I am fully aware that if in the course of making this Work I have infringed any copyright whether intentionally or otherwise, I may be subject to legal action or any other action as may be determined by UM.

Candidate's Signature

Date: 1st AUGUST 2010

Subscribed and solemnly declared before,

Witness's Signature

Date: 1st AUGUST 2010

Name: DR. MOHAMMAD NAZRI BIN MD. SHAH

Designation: CLINICAL RADIOLOGIST AND LECTURER
DEPARTMENT OF BIOMEDICAL IMAGING
FACULTY OF MEDICINE
UNIVERSITY OF MALAYA

ABSTRACT

Gated community housing schemes are basically neighbourhoods which are surrounded by perimeter fencing, with private security guards manning the area and restricted public access. The neighbourhoods are usually surrounded by lush landscaping and privately maintained amenities. Gated communities have become an increasingly popular housing scheme in Malaysia, particularly in the developed states such as Kuala Lumpur, Selangor, Johore and Malacca. The growing number of this type of scheme is greatly influenced by several factors, such as safety and security, privacy and exclusivity and is considered as very profitable by the developers. Although gated communities are well received by the public, there are certain grey areas that need to be addressed in dealing with gated community housing schemes. Such developments were not formally and properly documented by the authorities and most local authorities did not have a proper guideline on how to deal with applications for gated community developments. There have also been many legal and social issues surrounding the developments of gated communities in Malaysia. This dissertation seeks to examine the developments of gated communities in Malaysia, particularly in the Klang Valley. The study will also focus on the factors which triggered such developments and the existing housing policies and laws, and examine the legal and social implications of gated communities to the Malaysian society. The law is as at 16 October 2009.

ACKNOWLEDGEMENT

In the name of Allah, Most Gracious, Most Merciful.

When I first embarked on my research several years ago, a wise professor told me that it would be a very lonely and difficult journey. Thankfully, alone as I was and difficult as it was, I was never lonely in my quest for knowledge. This dissertation would not have been possible without the assistance obtained from several parties. It is a pleasure to express my gratitude to them all in my humble acknowledgment.

I offer my sincerest gratitude to my supervisor, Dr. Yong Chiu Mei for her supervision, advice and patience in guiding me from the early stage of this research. For this, I am indebted to her more than she knows. Although I have rarely relied on the kindness of strangers, my meeting with Prof. Dr. Hj. Kamaruzaman Jusoff has altered my perception on gated community residents. His invaluable assistance in obtaining the data for the survey could not have come at a better time. I would also like to extend my gratitude to Dr. Azimuddin Bahari who was kind enough to meet me despite his hectic schedule. His significant amount of input in this area was invaluable.

I am grateful to many of my colleagues who have supported me throughout the research. I would to thank Prof. Datuk Dr. Khaw Lake Tee, Assc. Prof. Dr. Siti Zaharah Jamaluddin, Assc. Prof. Dr. Jal Zabdi Mohd Yusoff, Assc. Prof. Dr. Gan Ching Chuan, Assc. Prof. Datin Dr. Mary George, Dr. Abdul Samad and Puan Nurhalida Mohamed Khalil for their input on certain issues in the research. A special thank goes to Puan Narimah for her advice on the suitable format of the dissertation. The staffs at the Tan Sri Professor Ahmad Ibrahim Law Library have also been very helpful in assisting me to find the relevant materials, especially at the early stage of the research.

I am forever indebted to Miss Haryati Yusoff who took time to read my dissertation and offer constructive comments on how to improve it. I would like to extend my gratitude to Puan Norzila binti Jasmi, Puan Rahah binti Ismail, Miss Wan Roslinda Wan Ismail, Miss Suriati Shamsuddin and Miss Suzanna Abdul Hadi for their help, support and friendship.

Many thanks also go to the staff of the Department of Director General of Lands and Mines of the Ministry of Natural Resources and Environment, Ministry of Housing and Local Government, the Economic Planning Unit of the Prime Minister's Department, Kuala Lumpur City Council, Petaling Jaya City Council, Kajang Municipal Council, Selayang Municipal Council, Subang Jaya Municipal Council and Land Office (Wilayah).

Last but not least, I would like to thank my parents for their love, support and encouragement, and for never stop believing in me. To my husband Mohammad Nazri Md Shah and my children, Adam and Adrin who had to endure my absence for countless nights, their ever presence and understanding during my research have given me the strength to complete this dissertation. Thank you.

TABLE OF CONTENTS

	Page
Abstract	ii
Acknowledgements	iii
Table of contents	v
List of statutes	xiii
List of cases	xv
List of tables	xvii
List of flowchart	xviii
List of charts	xix
List of abbreviations	xx

CHAPTER ONE

INTRODUCTION

I.	Gated community: definition and features	1
II.	The rising trend of gated community housing scheme in Malaysia	3
III.	Issues relating to gated communities	5
IV.	Objectives of the study	7
V.	Literature review	8
VI.	Scope of study	10
VII.	Methodology	11
VIII.	Problems and limitation	14
IX.	Outline of dissertation	15
X.	Areas for further research	17

CHAPTER TWO

THE CONCEPT OF GATED COMMUNITIES

I.	Introduction	18
II.	History on gating and fencing in Malaysia	19
A.	Gating and fencing in Malay customary law	19
1.	<i>Hukum Kanun Melaka or the Malacca Digest</i>	21

2.	<i>Undang-Undang Johor or the Laws of Johore</i>	23
3.	<i>Undang-Undang Kerajaan or the Malay Digest</i>	24
4.	<i>Undang-Undang Sembilan Puluh Sembilan of Perak</i> or the <i>Ninety Nine Laws of Perak</i>	26
5.	<i>Undang-Undang Kedah or Kedah Laws</i>	28
B.	Traditional practice of fencing by native Malays and the royals	29
C.	Forts and ancient cities	31
D.	<i>Kampung baru</i>	33
III.	The basic notion of gated communities and the differences between gated communities and guarded communities	34
IV.	Common features of gated communities	39
A.	Provision for security	39
B.	Protection of privacy	44
C.	Provision of amenities	44
D.	Exclusive membership of clubs	45
E.	Architectural consistency	46
F.	Green environment	46
G.	Low density	47
H.	Privatisation of maintenance of facilities	47
V.	Types of gated communities	49
VI.	Developments of gated communities in Malaysia	51
VII.	Conclusion	60

CHAPTER THREE

GOVERNMENT POLICIES AFFECTING HOUSING DEVELOPMENTS

I.	Introduction	62
II.	Right to housing as basic human rights	63
A.	Universal Declaration of Human Rights	64
B.	International Covenant on Economic, Social and Cultural Rights ("ICESCR")	65
C.	United Nations Human Settlements Program	66
III.	History and the shaping of policies with regard to housing in Malaysia	69
A.	The New Economic Policy ("NEP")	70
B.	The National Development Policy ("NDP")	72
C.	The National Vision Policy ("NVP")	73
D.	Urbanisation in Malaysia	74
IV.	The current housing needs in Malaysia	77
A.	The population growth and the current housing supply in Malaysia	77
B.	Housing requirement and property price	79
V.	The role of local authorities in relation to planning matters	89
A.	Sustainable development through Local Agenda 21	90
B.	Local authority as the planning authority	91
C.	Application for planning permission	93
D.	Application for approval of pre-computation plan	95
E.	Planning standards for open space and recreation	96

VI.	Local authorities' reaction towards gated community housing developments	98
A.	Position taken by the local authorities before Amendments to the Strata Titles Act 1985 by Act A1290, with no uniform guidelines	100
1.	Guidelines by Kuala Lumpur City Council	101
2.	Guidelines by Johor Bahru Tengah Municipal Council	104
3.	Guidelines by Selayang Municipal Council	105
4.	Guidelines by Kajang Municipal Council	105
B.	Introduction of a uniform guideline in Selangor before amendments to the Strata Titles Act 1985 by Act A1290	107
C.	Position taken by the local authorities in Selangor after the amendments to the Strata Titles Act 1985	112
VII.	Conclusion	116

CHAPTER FOUR

LEGAL ISSUES SURROUNDING GATED COMMUNITY HOUSING SCHEMES

I.	Introduction	119
II.	Legislative provisions pertaining to issuance of title for gated community housing schemes prior to 12 April 2007	120
III.	Legal issues of gated communities prior to the amendments of the Strata Titles Act 1985 in 2007 by Act A1290	123
A.	The inadequacy of the NLC in providing for gated communities	125
B.	The inadequacy of the provisions in the Strata Titles Act 1985 in providing for gated communities	127
C.	The employment of deed of mutual covenant and related issues	129
1.	The legality of a deed of mutual covenant	131
2.	Enforceability of the DMC on the subsequent purchaser	134
3.	Possible legal approaches to enforce the DMC on the subsequent purchaser	135
i.	Whether the DMC can be considered as an easement	136
ii.	Whether the DMC can be considered as equitable easement	139
iii.	Whether the DMC amounts to a restrictive covenant	142
D.	The legal status of the amenities, parks and open space located inside the gated communities under the LGA, the TCPA, the NLC and the SDBA	146
1.	The Local Government Act 1976	147
2.	The Town and Country Planning Act 1976	148
3.	The National Land Code 1965	148
4.	The Street, Drainage and Building Act 1974	152

E.	The legality of the act of installing barriers in public place	154
1.	Street, Drainage and Building Act 1974	155
2.	The Road Transport Act 1987	156
F.	The responsibility of maintenance of facilities in gated communities	158
G.	The legality of agreement for rebate in assessment tax	161
H.	Overall observation of the legal issues surrounding gated communities prior to the amendments of the Strata Titles Act 1985 in 2007 by Act A1290	164
IV.	Legislative provisions after the 2007 amendments to the Strata Titles Act 1985 by Act A1290	165
A.	Amendments to the Strata Titles Act 1985 by Act A1290	165
B.	Amendments to the Housing Development (Control and Licensing) Regulations 1989 by P.U. (A) 395/2007	166
C.	Introduction of the Building and Common Property (Maintenance and Management) Act 2007	167
V.	Legal issues surrounding gated communities after the 2007 amendments to the Strata Titles Act 1985 by Act A1290	169
A.	Delay in issuance of strata title	170
B.	The competency of the Commissioner of Building and the possibility of conflict of interests where government agencies are involved as developers in strata developments	172
C.	The lack of procedure for appeal if party is unsatisfied with the decision of the Commissioner of Building	177
1.	Lack of procedure for appeal of the BCPMMA	177
2.	The effect of ouster clause in the BCPMMA	178
D.	The ambiguity of whether managing agents are required to be registered under the Valuers, Appraisers and Estate Agents Act 1981	180
E.	The possibility of fraudulent certification in strata developments	183
F.	The non-fulfilment of establishments of the Strata Titles Boards in every state	186
G.	The inadequacy of provisions to accommodate different interest between parties in mixed developments	188
H.	The impracticability of the requirement of 75 per cent for statutory termination by the purchasers	189
I.	Overall observation of the legal issues after the 2007 amendments to the Strata Titles Act 1985 by Act A1290	190
VI.	Common legal issues relating to gated communities	191
A.	Infringement of privacy	191
B.	The legality of the practice of withholding visitor's identification documents	193
1.	The National Registration Regulations 1990 ("NRR")	194
2.	The Road Transport Act 1987 ("RTA")	196
C.	Occupiers' liability	197
D.	Overall observation of the common legal issues applicable to gated communities	199

VII. Conclusion	200
-----------------	-----

CHAPTER FIVE

OPINIONS FOR AND AGAINST GATED COMMUNITIES

I. Introduction	203
II. Opinions supporting gated communities	206
A. Gated communities are perceived as safer than their non-gated counterparts	207
B. Gated communities promote strong sense of community	213
C. Gated communities protect the privacy of residents	214
D. Gated communities promote better venue management	215
E. Gated communities improve real estate price	217
III. Opinions against gated communities	219
A. Gated communities create a false sense of security	220
B. Risk of spatial and social segregation	227
C. Financial and planning implication	231
D. Risk of displacement of crimes	236
E. Issue of delay in emergency response and difficulty faced by local authorities	237
F. Gated communities do not increase sense of community	239
IV. Overall observation on the opinions for and against gated communities	241
V. Survey on gated communities	243
A. Previous studies	243
B. Purpose of survey	245
C. The research objectives	245
D. Survey methodology	246
E. The location and the respondents	246
F. Survey limitation	247
G. Findings of survey	249
1. Background of respondents: age, household size, type of ownership	249
2. Racial background	252
3. Financial background	253
4. Main attractions of gated communities	256
5. Level of satisfaction	258
6. Community interaction	260
7. Awareness of residents association	262
H. Further survey observation	263
1. Whether gated communities promote racial and economic segregation	264
2. Motivations for living in gated communities	265
3. Whether gated communities encourage healthy relationship between neighbours	266
VI. Conclusion	266

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

I.	Conclusion	272
A.	To study the developments of gated communities in the Klang Valley	272
B.	To study the effect of developments of gated communities on the housing needs in Malaysia	273
C.	To identify legal consequences of gated community housing schemes	274
D.	To evaluate possible social implications arising from uncontrolled growth of gated communities	276
E.	To determine whether gated communities should be encouraged in Malaysia and to offer viable alternatives to having gated communities	277
II.	Recommendations	279
A.	Conduct a formal study on the overall impact of gated community housing schemes	279
B.	Improve the legislation pertaining to gated community developments by referring to relevant legislations in New South Wales and Singapore	281
1.	Australia (New South Wales)	283
i.	Legislative Background of the Community Land Development Act 1989 and the Community Land Management Act 1989	283
ii.	Advantages of community title scheme	285
iii.	The community title scheme	286
iv.	Features in the CLDA which not available in Malaysian legislation	289
(a)	Private access way in community title scheme	290
(b)	Conversion of conventional and strata subdivision to community title	291
(c)	Variation and termination of community title	292
(d)	Requirement for managing agent to be licensed	294
(e)	Provision for alternative dispute resolution	295
2.	Singapore	296
i.	Legislative background	297
ii.	Two-tier management corporation	299
C.	Provide for an effective regulation to regulate the application of the BCPMMA	300
D.	Efficient appointment and administration of the Strata Titles Board	300
E.	Provide for an online database of the purchasers of properties	301
F.	Legislate statute for protection the privacy	302

G.	Enforcement of the provisions in the relevant statutes	303
H.	Eliminate negative public perception on the social and planning implications of gated communities	304
1.	Unrestricted pedestrian access	304
2.	Limiting construction of perimeter fencing around residential buildings only	305
3.	Closure of gate in the evening only	305
I.	Improve the level of security and privacy in conventional housing schemes	306
1.	Improve the number and the distribution of policemen	306
2.	Encourage the Rakan Cop Programme	307
3.	Encourage neighbourhood watch	308
4.	Extend Safe City Programme to all cities	310
5.	Safety by housing design	313
6.	Alley-gating instead of neighbourhood gating	314
7.	Ban door-to-door sales	315
J.	Offer better public facilities and improve services and maintenance of public areas	317
III.	Concluding remarks	319

BIBLIOGRAPHY

APPENDIX 1

Questionnaire for residents of gated communities

APPENDIX 2

Photos of D'villa Damansara Equestrian

APPENDIX 3

Photos of Sri Bukit Persekutuan

APPENDIX 4

Photos of Duta Nusantara

APPENDIX 5

Photos of Bukit Kiara Residences

APPENDIX 6

Photos of Duta Tropika

APPENDIX 7
Photos of Tropicana Indah Resort Homes

APPENDIX 8
Photos of Selangor Polo Country Club

APPENDIX 9
Photos of Tropicana Golf and Country Resort

LIST OF STATUTES

MALAYSIA

Building and Common Property (Maintenance and Management) 2007 (Act 663)

Companies Act 1965 (Revised - 1973) (Act 125)

Contracts Act 1950 (Revised 1974) (Act 136)

Direct Sales Act 1993 (Act 500)

Evidence Act 1950 (Act 56)

Housing Development (Control and Licensing) Act 1966 (Act 118)

Housing Development (Control and Licensing) (Amendment) Act 2007 (Act A1289)

Housing Development (Control and Licensing) (Amendment) Regulations 2007 [P.U. (A) 395/2007]

Housing Development (Control and Licensing) Regulations 1989 [P.U.(A)58/89]

Licensed Land Surveyors Act 1958 (Revised 1991) (Act 458)

Local Government Act 1976 (Act 171)

National Land Code 1965 (Act no. 56 of 1965)

National Registration Regulations 1990 [P.U.(A) 472/90]

Police Act 1967 (Act 344)

Private Agencies Act 1971 (Act 27)

Road Transport Act 1987 (Act 333)

Selangor Housing and Real Property Board Enactment 2001 (Enactment No. 14 of 2001)

Strata Titles Act 1985 (Act 318)

Strata Titles (Amendment) Act 2001 (Act A1107)

Strata Titles (Amendment) Act 2007 (Act A1290)

Street, Drainage and Building Act 1974 (Act 133)

LIST OF CASES

Alfred Templeton & Ors v Low Yat Holdings Sdn Bhd [1989] 2 MLJ 202.

Austerberry v Corporation of Oldham [1885] 29 Ch D 750 (CA).

Bijak Utama Sdn Bhd v. Adwin Sdn Bhd 1997 MLJU LEXIS 596; [1997] 119 MLJU 1.

China Insurance Co Ltd v Woh Hup (Pte) Ltd [1977] 2 MLJ 57.

Dato' Soo Lai Sing v. Kumpulan Sierramas (M) Sdn Bhd & Anor [2004] 3 MLJ 546.

Elliston v Reacher, (1908) 2 Ch 374.

Harris v Birkenhead Corporation [1976] 1 WLR 279.

Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia & Anor [1995] 3 MLJ 369.

Inter-Continental Mining Sdn Bhd v Societe des Etains de Bayas Tudjuh [1974] 1 MLJ 145.

Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor [1995] 1 MLJ 719.

Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor Dengan Tanggungan [1999] 3 MLJ 1.

Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis [1995] 1 MLJ 308.

Rhone and another v Stephens [1994] 2 WLR 429.

Shirlaw v Southern Foundries Ltd [1939] 2 KB 206.

Siew Soon Wah & Ors v Yong Tong Hong [1973] 1 MLJ 133.

Sri Inai (Pulau Pinang) Sdn Bhd v Yong Yit Swee [[2003] 1 MLJ 273.

Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union [1995] 2 MLJ 317.

Tam Kam Cheong v Stephen Leong Kon Sang & Anor [1980] 1 MLJ 36.

Templeton & Ors v Low Yat Holdings Sdn Bhd & Anor [1993] 1 MLJ 443.

The Moorcock (1889) 14 PD 64.

United Malayan Banking Corporation Bhd & Anor v. Pemungut Hasil Tanah, Kota Tinggi [1984] 2 MLJ 87.

Walsh v Lonsdale (1882) 21 Ch D 9.

Wheat v Lacon & Co Ltd [1966] 1 All ER 582.

Table 1.1: List of Listed Companies in the Klang Valley

Table 1.1: Regulation and Original Land Rate by State, 2000-2010

Table 1.2: Housing Registrations by State, 1990-2010

Table 1.3: Public and Private Sector Housing Units, 2000-2010

Table 1.4: Total of Housing Units by Licensed Developer Approved for Development According to States and Category of Price, 2006

Table 1.5: Mean Residential Property Sale Price per Unit by State, Terengganu and Selangor, 2002

Table 1.6: List of Development Sites as "Control Community" in the Website of the Ministry of Housing and Local Government

Table 1.7: Regulations for the Development - Guide Standards for Application of New Listed Community Sites by the Amendments to the State Titles Act, 1985 by Act A1290

Table 1.8: Planning and Architectural Requirements for Application of New Development of Listed Community after the Amendments to the STA by Act A1290

Table 1.9: Limitation of Height of Units according to Development Category after the Amendments to the STA by Act A1290

Table 1.10: Mean Monthly Gross Household Income by Ethnic Group, 2004 and 2010 (RM)

Table 1.11: Applications for Listed Community

Table 1.12: Applications for Listed Community

LIST OF TABLES

Table 2.1:	List of Gated Communities in the Klang Valley
Table 3.1:	Population and Urbanisation Rate by State, 2000-2010
Table 3.2 :	Housing Requirements by State, 2006-2010
Table 3.3:	Public and Private Sector Housing Targets, 2006 – 2010
Table 3.4:	Total of Housing Units by Licensed Developers Approved for Development According to States and Category of Price, 2006
Table 3.5:	Mean Residential Property Sale Price per Unit in Kuala Lumpur and Selangor, 2008
Table 3.6:	List of Developments Listed as “Gated Community” in the Website of the Ministry of Housing and Local Government
Table 3.7:	Requirements for the Development Scheme Standard for Application of New Gated Community Prior to the Amendments to the Strata Titles Act 1985 by Act A1290
Table 3.8:	Planning and Architectural Requirements for Application of New Development of Gated Community after the Amendments to the STA by Act A1290
Table 3.9:	Limitation of Housing Units according to Development Category after the Amendments to the STA by Act A1290
Table 5.1:	Mean Monthly Gross Household Income by Ethnic Group, 2004 and 2007 (RM)
Table 5.2 :	Motivations for Living in Gated Communities
Table 5.3 :	Motivations for Living in this Particular Gated Community

LIST OF FLOWCHART

- Flow Chart 3.1: Procedure for Application of Planning Permission
- Flow Chart 3.2: Procedure for Application of Pre-Computation Plan Approval

LIST OF CHARTS

- Chart 5.1: Age Group of Respondents
- Chart 5.2: Household Size
- Chart 5.3: Type of Ownership
- Chart 5.4: Racial Composition
- Chart 5.5: Type of Employment
- Chart 5.6: Background of Employment
- Chart 5.7: Average Monthly Income (RM)
- Chart 5.8: Satisfaction of Living in Gated Community
- Chart 5.9: Would Recommend Gated Community to Others
- Chart 5.10: Frequency of Neighbourhood Visit
- Chart 5.11: Frequency of Neighbourhood Conversation
- Chart 5.12: Satisfaction of Neighbourhood Relationship
- Chart 5.13: Wish to Screen Potential Neighbour

LIST OF ABBREVIATIONS

2000 Census	Population and Housing Census 2000
BCPMMA	Building and Common Property (Maintenance and Management) Act 2007
CCC	Certificate of Completion and Compliance
CCTV	Closed-circuit television system
CFO	Certificate of Fitness for Occupation
CID	Common Interest Development
COB	Commissioner of Building
DBKL	Kuala Lumpur City Council
DMC	Deed of mutual covenant
<i>et al</i>	<i>et alii</i>
HBA	National House Buyers Association
HDA	Housing Development (Control and Licensing) Act 1966
HDR	Housing Development (Control and Licensing) Regulations 1989
ICESCR	International Covenant on Economic, Social and Cultural Rights
<i>Ibid.</i>	<i>Ibidem</i>
<i>Id.</i>	<i>Idem</i>
JMB	Joint Management Body
LGA	Local Government Act 1976
<i>Loc. cit</i>	<i>loco citato</i>
MBPJ	Petaling Jaya City Council
MC	Management corporation
Ministry	Ministry of Housing and Local Government
MLJ	Malayan Law Journal

MPJBT	Johor Bahru Tengah Municipal Council
MPKj	Kajang Municipal Council
MPS	Selayang Municipal Council
NDP	National Development Policy
NVP	National Vision Policy
NEP	New Economic Policy
NLC	National Land Code 1965
NRR	National Registration Regulations 1990
NSWCSTA	New South Wales Conveyancing (Strata Titles) Act 1961
NSWSTA	New South Wales Strata Titles Act 1973
p.	page
PAA	Private Agencies Act 1971
PSKL	Kuala Lumpur Structure Plan
PSP	Principal submitting person
RTA	Road Transport Act 1987
s.	section
SDBA	Street, Drainage and Building Act 1974
SPA	Sale and Purchase Agreement
STA	Strata Titles Act 1985
STB	Strata Titles Board
TCPA	Town and Country Planning Act 1976
TPP	Third Perspective Plan
UDHR	Universal Declaration of Human Rights
UN-HABITAT	United Nations Human Settlements Programme

CHAPTER ONE

INTRODUCTION

I. GATED COMMUNITY: DEFINITION AND FEATURES

As at 4 October 2009, the population in Malaysia has reached 28.31 million people.¹ By the year 2010, the number is expected to grow up to 28.96 million people.² The growing population indicates the growing needs for housing in Malaysia. The residential segment has remained the main growth for the Klang Valley property market with encouraging demand for new launches.³ One of the main trends for developers nowadays is to build gated community housing schemes due to great demands and high profits. Houses in such schemes require private maintenance instead of the usual maintenance by local authorities. These houses, which mainly consist of bungalows and semi-detached houses, were built as landed properties instead of the usual parcels in multistorey buildings.

This development has gone unchecked for several years and despite the risks and problems it caused or may cause in the future, there has been no national policy formulated by the Malaysian government to monitor and govern this trend. With the rising need for housing, this research is essential in studying the growth and the impact of the increasing number of gated communities, as they are considered affordable to only a small percentage of population in Malaysia.

¹Malaysia, Department of Statistics Malaysia, *Population*, 31 July 2009 http://www.statistics.gov.my/eng/index.php?option=com_content&view=article&id=50:population&catid=38:kaystats&Itemid=11, last date of access 4 October 2009.

² Malaysia, The Economic Planning Unit, Prime Minister's Department, *Chapter Eleven: Enhancing Human Capital, Ninth Malaysian Plan*, (2006), p. 250.

³ Phoon, Zoe, "Bright End to A Gloomy Start", *New Straits Times*, 21 February 2004.

In Oxford Advanced Learner's Dictionary of Current English, the word "gated" is defined as "having a gate or gates across, which need to be opened and closed by drivers using the road."⁴ The word "community" has several definitions, including "the condition of sharing, having things in common or being alike in some way,"⁵ or "a group of people of the same religion, race, occupation, etc, or with shared interest."⁶ The phrase "the community" is defined as the "people living in one place, district of country, considered as a whole."⁷

The most popular and referred to definition of gated communities is provided by Blakely and Snyder, in their famous book *Fortress America: Gated Communities in the United States*. Based on their research on gated communities in the United State of America, they defined gated communities as:

... residential areas with restricted access in which normally public spaces are privatised. They are security developments with designated perimeters, usually walls or fences, and controlled entrances that are intended to prevent penetration by non-residents. They include new developments and older areas retrofitted with gates and fences, and they are found from inner cities to exurbs and from the richest neighbourhoods to the poorest.⁸

MSN Encarta defines gated community as a private, upscale residential community that can be accessed only through guarded gates and that has its own security force.⁹ Karina Landman in her article¹⁰ refers to gated community as a "physical area that is fenced or

⁴ Crowther, Jonathan (ed.), *Oxford Advanced Learner's Dictionary of Current English*, (Oxford: Oxford University Press, 5th ed., 1995), p. 488.

⁵ *Id.* 230.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Blakely, Edward J. and Snyder, Mary Gail, *Fortress America: Gated Communities in the United States*, (Washington: Brookings Institution Press, 1997), p. 2.

⁹ MSN Encarta Dictionary, *gated community*, 2009,
http://encarta.msn.com/dictionary_561547178/gated_community.html.

Last date of access 13 January 2009.

¹⁰ Landman, Karina, "Gated Communities and Urban Sustainability: Taking A Closer Look At The Future", 2nd Southern African Conference on Sustainable Development in the Built Environment, South Africa, 23-25 August 2000, p. 2.

walled of from its surroundings.” Public access to the neighbourhood is restricted and the usage of facilities in the gated community is for the exclusive enjoyment of the residents.

Closer to home, a definition of gated community was offered by Azimuddin Bahari, a well-known local figure in this area as:

A cluster of houses or buildings that are surrounded by a wall, fence or a perimeter or any enclosure with entry or access of houses or buildings controlled by certain measures or restrictions such as guards, ropes, strings, boom gates, chains or blocks which normally includes 24-hour security, guard patrols, central monitoring systems and closed circuit televisions (CCTV).¹¹

The definitions of gated communities, locally and internationally, are more often than not related to the physical and private security features available in gated communities, such as perimeter fencing and walls to restrict public access to the neighbourhood. Apart from the security features of gated communities, other common features relating to such housing are exclusive recreational facilities for the residents and private maintenance of amenities.

II. THE RISING TREND OF GATED COMMUNITY HOUSING SCHEME IN MALAYSIA

The practice of gating and fencing had existed for centuries, and were commonly used as boundary markers and even as forts. For example, the Great Wall of China is about 2000 years old and was built to protect China from invaders. Castles in the Middle Ages were surrounded by walls, and some of the fenced areas also functioned as towns. In Malacca, the Portuguese built the famous fort of A Famosa and were able to protect the town for 150 years. In Malaysia, old and traditional type of housing did not have fences around the houses. Territories were then marked with rock, known as *batu tanda*. Later, it was

¹¹ Azimuddin Bahari, “Regulatory and Practical Aspects of Gated Community Projects”, *Seminar on Gated Community Projects: Regulatory and Contractual Issues*, Kuala Lumpur, 28 July 2005, p. 4.

common to find houses with wire fencing surrounding the property, and nowadays wire fencing are replaced by brick walls. Brick walls and modern fences are widely used and accepted as territorial mark in landed properties.

The earliest known development of gated community was Country Heights in Kajang, launched in 1987. Malaysia is not the only country in the world with gated community housing scheme as the number of gated communities are also on the increase around the world, such as in Australia, South Africa, United Kingdom, United States of America, Spain, Portugal, Russia, Turkey, Egypt, Syria, Indonesia, Argentina and Brazil.¹² In United States of America, by 1997 it was estimated that 20,000 gated communities, with more than three million units, had been built across the country.¹³ By year 1998, it was believed that gated community population in America had reached 16 million and was growing at a fast rate.¹⁴

Although no steady data has been provided to illustrate the rising number of gated communities in Malaysia, the growth of such developments is well reported in the media. Aggressive promotions and advertisements by developers in the newspapers indicate that gated community developments are more common nowadays compared to ten years ago. Since there is no formal or definitive number of gated communities recorded in Malaysia, the writer arrived to the estimation of the number of gated communities in the Klang Valley by looking at the advertisements by developers and reports in the local

¹² Yong, Yung Choy, "Legal Issues if Gated Community Projects: Default of Parties, Exclusion of Liability and Right to Common Property", *Seminar on Gated Community Projects: Regulatory and Contractual Issues*, Kuala Lumpur, 28 July 2005, p. 2.

¹³ Blakely & Snyder, *op. cit.*, p. 7.

¹⁴ Low, S., *Behind the Gates: Life, Security and the Pursuit of Happiness in Fortress America*, (New York and London: Routledge, 2003), p.15 quoted from Pow, Choon-Piew, "From Public Housing to Private Neighborhoods: Gated Condominium Estates in Singapore", *Private Urban Governance : Production of Urban Spaces, Interactions of Public and Private Actors, Sustainability of Cities*, Paris, 5-8 June 2007.

newspapers, where there are at least 100 gated projects in the Klang Valley alone.¹⁵ Gated communities are indeed becoming more popular with house purchasers in Malaysia.

III. ISSUES RELATING TO GATED COMMUNITIES

Despite the rapid developments of gated communities, to date there appears not much formal research on the impact of such progress. The development of gated communities in Malaysia had triggered the existence of “guarded communities”, where the residents of conventional residential areas put up barriers in their neighbourhoods to restrict non-residents from using the roads in their communities. Criticism against gated communities came from the non-residents who felt that gated communities are not the solution for the high level of crime in Malaysia,¹⁶ and also from the residents themselves who discovered that their gated communities were inconsistent with the developers’ promise of security and advanced facilities.¹⁷

There have been many problems relating to the developments of gated communities in Malaysia. For example, the legality of such developments was questionable due to the lack of law to cater for this scheme of development. The persistent demand by the developers and the purchasers of gated communities had resulted in the amendments to the Strata Titles Act 1985¹⁸ and the introduction of the Building and Common Property (Maintenance and Management) 2007¹⁹, both of which took effect on 12 April 2007.

¹⁵ As at 15 September 2009. Refer to Chapter Two of the dissertation.

¹⁶ Ariff Khalid, “Living in gated areas while crooks go free”, *The Star*, 22 March 2007.

¹⁷ Dr. Raj & Dr. Pushpa, “Not so gated community”, *The Star*, 24 March 2006 and Harinderan, K., “It’s a pie in the sky, say house buyers”, *New Straits Times*, 2 April 2009.

¹⁸ Act 318.

¹⁹ Act 663.

Despite this, the problems relating to gated communities were not entirely solved as the amendments did not apply to developments prior to the amendments in 2007. As gated communities approved after the amendments could now be issued with strata titles, several problems relating to strata titles properties now apply to gated communities, such as delay to strata title issuance, lack of appointment of Strata Titles Board and unaddressed differences of interests of parties in mixed developments. In addition to this, there are also common legal issues which are applicable to both gated communities which were developed before and after the 2007 amendments to the Strata Titles Act 1985, such as the legality of retaining visitors' identification documents by the security guards employed in gated communities.

Social issues are one of the major concerns in countries with gated communities. Gated communities were criticised as having a negative impact on the social developments of the communities in Malaysia. Some scholars even associated gated communities as a mean of division between the rich and the poor as it was believed that only individuals within the high income group would be able to afford such properties. As such, gated communities have been considered to promote segregation between the have and have-nots.

Gated communities physically separate a specific area from its environment and create zones or pockets of restricted access within the urban structure.²⁰ With many gated communities built in the urban areas, urban planning of cities might be affected. From the financial point of view, there have been demands for rebates in assessment tax by purchasers of gated communities. The justification for such request is based on the argument that local authorities need not maintain area inside gated communities, thus

²⁰ Landman, Karina, *op. cit.*, p. 4.

relieving them from such duty. Consequently, gated communities help to minimise costs to be incurred by the local authorities in maintenance. If such rebates were allowed, the local authorities would lose one of their financial sources that may be utilised for the benefit of the public. These consequences of gated communities, potential or real, had triggered several cities around the world to ban any type of development which resembles gated community.

The Malaysian authorities, however, appeared to have encouraged developments of gated communities through the passing of the amendments to the Strata Titles Act 1985 in 2007, the positive statement made by the then Minister of Housing and Local Government on 18 December 2004 on the rights of the public to gate themselves and the issuance of guidelines on the developments of gated and guarded communities by the Selangor Housing and Real Estate Board.²¹ These were despite the disapproval of gated communities in Malaysia as shown by some communities, including the National House Buyers Association. A study on the implications of gated communities is necessary to determine whether such developments should be encouraged in the future.

IV. OBJECTIVES OF THE STUDY

This study aims to explore the implications of gated community developments and to determine the legal and social issues relating to gated communities in Malaysia. The main objectives of this study are:

- (a) to study the development of gated communities in the Klang Valley;

²¹ Refer to Chapter Five of the dissertation.

- (b) to study the effect of development of gated communities on the housing needs in Malaysia;
- (c) to identify legal consequences of gated community housing scheme;
- (d) to evaluate possible social implications arising from uncontrolled growth of gated communities; and
- (e) to determine whether gated communities should be encouraged in Malaysia and to offer viable alternatives to having gated communities.

V. LITERATURE REVIEW

Currently, there is no local publication in the form of books on gated communities in Malaysia. Internationally, the main reference for studies on gated communities, including by scholars in Malaysia, is *Fortress America: Gated Communities in the United States* by Edward J. Blakely and Mary Gail Snyder.²² This book is widely referred to in many articles as it was considered as the earliest book published with regards to gated communities. Blakely and Snyder conducted comprehensive surveys of gated communities and came up with the common features of gated communities, where gated communities were classified into three categories namely lifestyle communities, prestige communities and security zone communities. While the research appeared to focus on the physical developments of gated communities, the social aspects of gated communities were also discussed by the authors. The authors provide some suggestions on how to build better communities without relying on gated communities.

²² Blakely, Edward J. and Snyder, Mary Gail, *Fortress America: Gated Communities in the United States*, (Washington D.C.: Brookings Institution Press, 1997).

There have been several dissertations written on gated communities in Malaysia, where the main focus of the studies were on the planning aspect of gated communities. A dissertation by Norazmin Adibah binti Othman²³ focused on the social development and physical planning of gated communities in Kuala Lumpur, which falls under the jurisdiction of Kuala Lumpur City Council or DBKL. The dissertation did not analyse the legal status of gated communities in depth and had a limited discussion on the social effect of gated communities, although Norazmin did conduct a survey on the planning aspect of gated communities in several gated communities in Kuala Lumpur.

Another dissertation was written by Sazzelina bt Ismail,²⁴ which focused on the development and planning features associated with gated communities in Kajang. The dissertation did not cover the legal issues associated with gated communities after the amendment to the Strata Titles Act 1985 in 2007. A survey was also conducted by Sazzelina focusing on the planning and social aspect of gated communities and to determine whether gated community developments were suitable for the local area under the municipality of Kajang Municipal Council. The writer found that although the surveys in both the dissertations received responses which were considerable poor from the residents, the results of the surveys are still relevant in determining the main attractions of gated communities in Malaysia and this could be used for the purpose of comparison in this dissertation. Another survey was conducted by the Faculty of Built Environment, University of Malaya²⁵ and the partial result of the survey is discussed in Chapter Five of the dissertation. The study focused on the rising trend of gated

²³ Norazmin Adibah binti Othman, "Kriteria Perancangan Dalam Pembangunan Perumahan Komuniti Berpagar di Kawasan Dewan Bandaraya Kuala Lumpur", (Dissertation for Master of Science in Land Administration and Development, Universiti Teknologi Malaysia, Johor, 2007).

²⁴ Sazzelina bt Ismail, "Penilaian Kesesuaian Konsep *Gated Community* Ke Atas Pembangunan 'Landed Property' di Kawasan Majlis Perbandaran Kajang", (Dissertation for Bachelor of Town and Country Planning, MARA University of Technology, Shah Alam, 2006).

²⁵ Nor Azlina Sulaiman, Yasmin Mohd Adnan, "The Rising Trend of Gated Community in Current Residential Development in Klang Valley", *International Conference on Sustainable Housing 2006*, Penang, Malaysia, 18-19 September 2006.

communities in the Klang Valley and did not discuss the legal provisions affecting gated communities in detail.

An article by Nor Azlinor Suffian²⁶ discussed the legal perspectives on gated communities in Malaysia in detail. The article was based on the old provisions of the Strata Titles Act 1985 and provided for an extensive legal discussion on the issues relating to gated communities before the 2007 amendments to the Strata Titles Act 1985. The article, however, did not discuss on the social implications associated with gated communities in Malaysia. Another paper was written by Grace Xavier²⁷ which focuses on the basic notion of gated communities to prevent crimes although the evidence supporting this claim was not conclusive. The advantages and disadvantages of gated communities were also discussed in the paper, but the legal issues after the amendments to the Strata Titles Act 1985 by Act A1290 and the introduction of the Building and Common Property (Maintenance and Management) Act 2007 were not included. Despite this, the paper has properly captured the social stigma associated with gated communities in Malaysia.

VI. SCOPE OF STUDY

The dissertation focuses on the legal problems faced by the developers and the purchasers before and after the amendments to the Strata Titles Act 1985 in 2007, and will also discuss the general common legal issues relating to gated communities.

Although the main focus of this paper is to focus on legal issues relating to the gated

²⁶ Azlinor Sufian, "A Legal Perspective on Gated Communities in Malaysia", *Eighth International Conference of the Asian Planning Schools Association*, Penang, 11-14 September 2005, also in (2006) 14 *IJUMIJ* 97.

²⁷ Xavier, Grace, "Gated and Guarded Communities – Security Concerns or Elitist Practice?", Singapore, *5th Asian Law Institute Conference*, 22-23 May 2008.

community developments, a social study on the impact of the rise of gated communities is inevitable. This paper will also touch on the impact of developments of gated communities particularly on urban sustainability and on the scarcity of affordable housing in the Klang Valley.

The discussion in this dissertation focuses on gated communities as defined in Chapter One and Two and excludes the developments of guarded communities. It is also not the object of this dissertation to make a comparative analysis between gated communities in Malaysia and other countries. However, reference to gated communities in other countries and reference to guarded communities in Malaysia are made as and when necessary. Since the Klang Valley is the fastest growing region for gated community developments, the focus of this paper is on the development of gated communities in the Klang Valley. The discussion on the legal issues of gated communities excludes the laws applicable in Sabah and Sarawak.

VII. METHODOLOGY

Early research and study was done at Tan Sri Professor Ahmad Ibrahim Law Library at Faculty of Law, University of Malaya. Research was done by referring to local statutes, books, journals, case reports and previous project papers. Since the area could be considered as new, there was no local book available on the subject itself. Although this posed a constraint in the research, the lack of publication on this topic justifies the study on gated communities.

The writer studied the relevant legislations concerning gated community developments in Malaysia. The National Land Code 1965²⁸ and the Strata Titles Act 1985 were vital in order to ascertain the laws relating to gated communities in Malaysia and to identify the lacuna within. Government reports on the yearly Annual Budget and the Ninth Malaysia Plan were studied in order to ascertain the relevant policies related to housing in Malaysia. Apart from library research, the most resourceful sources were the conference papers and materials from the internet.

The writer conducted field work by distributing survey questionnaires to residents in gated communities in order to ascertain the social and financial background of the residents to ascertain the motivation for living in gated communities. The questionnaires, drafted in both Malay language and English were delivered on foot and by mail to the residents. A copy of the questionnaire is appended to this dissertation and is referred to as Appendix 1.

Since written information on this subject is very limited, the writer conducted interviews to retrieve first hand information regarding issues involving gated communities. The individuals interviewed by the writer were:

- (a) Dr. Azimuddin bin Bahari, Director of Strata Management and Policy Development, Department of the Director-General of Lands and Mines, Ministry of Natural Resources and Environment, on the legal status of gated communities in Malaysia;
- (b) Mr. Chang Kim Loong, Honorary Secretary General of the National House Buyers Association, on the social impact of gated communities in Malaysia;

²⁸ Act 56 of 1965.

- (c) Mr. Raymond Tan, a committee member of the USJ18 Neighbourhood Watch Programme, on neighbourhood watch programme;
- (d) Mr. Mohd Nasrul bin Menhat, Chief Assistant Director of the National Housing Department, Ministry of Housing and Local Government, on the role of Commissioner of Building in Malaysia;
- (e) Mr. Ashidi bin Tarmizi, Assistant Town Planning Officer, Petaling Jaya City Council, on gated communities in Petaling Jaya;
- (f) Miss Zanariah binti Khalid, Technician (Planning), Subang Jaya Municipal Council, on gated communities in Subang Jaya;
- (g) Miss Saidatulakmar binti Mohamed, Town Planner, Kajang Municipal Council, on gated communities in Kajang;
- (h) Mr. Sheikh Mohd Fuaddilkharushee bin Mohamad Ilham, Town Planning and Development Department, Selayang Municipal Council, on gated communities in Selayang;
- (i) Miss Jeannie Tan, Valuer, Appraisal (M) Sdn Bhd, on the effect of gated communities on the value of property;
- (j) Miss Siti Saudah bt. Nori, Assistant Director of Distribution & Corridor Development Section, Economic Planning Unit, Prime Minister's Department, on the distribution of income in Malaysia; and
- (k) Miss Cynthia George, Assistant Director, Strata Titles Section, Department of Director General of Lands and Mines (Federal), Ministry of Natural Resources and Environment, Malaysia.

VIII. PROBLEMS AND LIMITATIONS

The Tan Sri Professor Ahmad Ibrahim Law Library did not have materials on gated communities in Malaysia at the early stage. The author had to acquire a set of the papers from the dissertation supervisor. Sources of literature in this topic were very limited.

The amendments to the vital legislation, namely the Strata Titles Act 1985 and the introduction of a new statute called the Building and Common Property (Maintenance and Management) Act 2007 were done at the writing stage of this dissertation. One of the objectives of this dissertation is to study the legal status of the gated community housing schemes which were considered as illegal at the time of writing, and the writer suggested amendments be made to the Strata Titles Act 1985 to overcome this issue. Although the amendments made this suggestion obsolete, the discussion on the position of gated communities completed prior to the 2007 amendments is still relevant considering the amendments only covered the new developments of gated community housing schemes.

The developers were reluctant to be interviewed to the extent of disallowing surveys to be conducted by the writer, stating that residents' privacy as their reason. It appeared that some of them were also concerned with the sensitivity of the issue of the status of gated communities since the developments were not legalised by the any provision in the Malaysian statutes.

Although the writer finally managed to obtain the permission to conduct survey at two separate gated community developments, the responses received from the residents were poor. This has affected data gathering of the background of the residents but has not

compromised the main findings of the survey. The main findings of the survey are still relevant as the responses received from the respondents in both gated communities were consistent.

No steady data was collected by the local authorities on the developments of gated communities in Malaysia as housing developments were not identified as gated community or not in the data entry of housing. The writer had to collect the relevant data by searching for advertisements of gated community developments in the newspapers, real property magazines and the internet. This shortcoming, again, has justified the writer's research for this dissertation.

IX. OUTLINE OF DISSERTATION

The dissertation is divided into six chapters to allow the writer to achieve the objectives of this study.

Chapter One of the dissertation introduces the topic of research, explains the definition and basic characteristics of gated communities and states the problems associated with gated community developments in Malaysia. It explains the objective of the study, the scope of research, the methodology used and the problems faced by the writer.

Chapter Two examines the brief history of the concept of gating and fencing in Malaysia. It explores the rising trend of fencing and examines the development of gated communities in Malaysia. The types and common features of gated communities are also discussed.

Chapter Three explores the basic need of housing as recognised by the United Nations and in Malaysia. It examines housing situation, policies involving housing and the relevant procedure relating to application to develop housing accommodation in Malaysia. The writer will examine the role of local authorities and their approach towards developments of gated communities before and after the amendments to the Strata Titles Act 1985 via the Strata Titles (Amendment) Act 2007 (Act A1290).

Chapter Four focuses on the legal status of gated communities in Malaysia, particularly on the legality of developments of gated communities before the 12 April 2007 as they did not conform with the requirements under the National Land Code 1965, the Strata Titles Act 1985, the Local Government Act 1976, the Town and Country Planning Act 1976, the Street, Drainage and Building Act 1974 and the Road Transport Act 1987. It also examines the legal issues relating to gated communities built after the 2007 amendments to the Strata Titles Act 1985 and the introduction of the Building and Common Property (Maintenance and Management) Act 2007. The common legal issues applicable to gated communities are also discussed.

Chapter Five explores the potential social implications of gated communities in Malaysia. The chapter examines the positive and negative implications of gated communities by referring to various studies that have been carried out overseas in and in Malaysia. The writer has conducted a survey to ascertain the background of the residents and to identify the main motivation for living in gated communities, in order to determine the validity of the assertions that gated communities create racial and economic segregation.

Chapter Six concludes the discussion of the chapters and determines whether the objectives of the study have been achieved. The writer will offer recommendations on the developments of gated communities in Malaysia, including improvements of the relevant statutes and alternatives to gated communities.

X. AREAS FOR FURTHER RESEARCH

There are several areas relating to gated communities which can be the subject of research in the future. Firstly, a national research to obtain the complete data on gated communities in Malaysia is vital to obtain the exact number of such housing in Malaysia. This research should also include a social survey to study the implications of gated communities in Malaysia. Secondly, a study on the effectiveness of the roles of the Commissioner of Buildings and the Strata Titles Board and a comparative analysis between the two could also be undertaken in the future. Thirdly, a study on the implementation and the enforcement of the provisions in the Strata Titles Act 1985 and the Building and Common Property (Maintenance and Management) Act 2007 in gated communities could also be undertaken.

CHAPTER TWO

THE CONCEPT OF GATED COMMUNITIES

I. INTRODUCTION

Although gated communities are considered as a new residential concept, the concept of gating has been in existence in Malaysia for centuries. Early written laws revealed that gates or fences were relevant in criminal laws and were particularly important in determining the rights and liability of individuals under property laws.

The discussion on the basic concept of gated communities is vital to identify the basic structure and the common features associated with gated community developments. The writer will firstly explore the concept of gating and fencing from the historical view in Malaysia, before proceeding to examine the basic notion of gated communities and the difference between gated communities and guarded communities. Finally, the writer will discuss the common features and types of gated communities. Some of these common features can also be considered as the attractions of gated community housing schemes. The writer will then discuss the developments of modern gated communities on Malaysia through a data compiled by the writer from the newspapers, articles and advertisements by various developers before concluding this chapter.

II. HISTORY ON GATING AND FENCING IN MALAYSIA

The trend of gating and fencing in Malaysian community is not new. The practice of erecting certain structures as barriers to protect one's properties has existed for long. History shows that most sovereigns from the past have built barricades around their palaces for various reasons.

Before the introduction of modern legal system by the British in the late 1800s, traditional customary laws were commonly used by the people who lived in *Tanah Melayu*,¹ including in matters relating to use of land. The Malay customary laws, also known as *adat*, were in verbal form, and produced in writing much later since the skills of writing were only acquired after the arrival of missionary and traders from India, Java and Arab. Islam has played a key role in the lives of the Malays and some *adat* were modified in accordance to the teaching of Islam, or even abolished.

The Malay customary laws were usually drafted based on the states in Malaysia and are discussed as below.

A. *Gating and Fencing in Malay Customary Law*

In the late 19th century, early Malay customary land tenure of landholding was recognised by all the Federated and Unfederated Malay States and Malacca, whereby “any person who

¹ Later known as Malaya.

carried out the task of clearing waste land was entitled to occupy it provided he cultivated it and handed over one-tenth of the produce to the States".² Although the sources of written Malay customary laws were limited, some practices in the Malay States were successfully compiled and documented, and subsequently translated into English by English scholars and administrators. Among them are *Undang-Undang Kerajaan*, *Hukum Kanun Melaka*, *Undang-Undang Johor*, *Undang-Undang Sembilan Puluh Sembilan* of Perak, and *Undang-Undang Kedah*. The relevant provisions of *Hukum Kanun Melaka*, *Undang-Undang Kerajaan*, and *Undang-Undang Sembilan Puluh Sembilan* of Perak are stated here in their translated form, while other laws will be briefly discussed. It is not the objective of this dissertation to go into great depth in discussing these laws.

Hukum Kanun Melaka or the *Malacca Digest* was one of the main digests. It is said to be adapted and adopted by other digests, such as *Undang-Undang Melayu*, *Undang-Undang Negeri*, *Undang-Undang Johor*, *Undang-Undang Pahang* and *Undang-Undang Kedah*, resulting these digests to resemble similarity in their contents.³ In order to avoid redundancy, the writer will therefore quote only the relevant provisions of the selected digests to illustrate the importance and the usage of fences in the early days.

² Khaw, Lake Tee and Teo, Keng Sood, *Land Law in Malaysia: Cases and Commentary*, (Kuala Lumpur: Butterworths Asia, 2nd ed, 1995), p. 1.

³ Liaw, Yock Fang, *Undang-Undang Melaka. The Laws of Malacca*, (the Hague: Martinus Nijhoff, 1976), p. 1.

1. *Hukum Kanun Melaka or the Malacca Digest*

The work of compiling *Hukum Kanun Melaka* or *Undang-Undang Melaka* started during the reign of Sultan Muhammad Shah between 1424 and 1444 and was concluded during the reign of Sultan Muzaffar Shah between 1445 and 1458.⁴ The digest is divided into two parts: maritime and non-maritime. The non-maritime part consists of, among others, criminal law, family law and property law. Some of the laws were derived from the practice of Islamic belief while others had no such influence. Gating and fencing were used to protect one's property from human intrusion and from being destroyed by animals. The existence of fences and gates determined the rights of the owner of the property and the liabilities of trespassers and the owners of the trespassing animals. It also had an impact on the penalty of the offence.

There were several provisions in *Undang-Undang Melaka* relating to property law and the practice of fencing one's property. This indicates that the practice of gating and fencing started as early as in the 16th century. For example, an individual whose buffalo had caused damage to another person's fences would receive no or limited compensation if the buffalo was killed, as appeared in Clause 21.2 of *Undang-Undang Melaka*:

If a buffalo mischievously causes great damage to another's fences or any kind of damages, be it during the night or in the daytime and the owner is unable to keep it in its pen, no compensation shall be given in the event of the buffalo's being killed by someone at night. If it is killed in the daytime, only half of its value has to be paid...

Clause 21.2 demonstrates the importance of fences to landowners, particularly to farmers. Farmers were required to build fences and dig trenches around their crops to protect their produce. An owner of a livestock such as buffalo, could claim compensation for his

⁴ *Id.*, p. 38.

livestock if the buffalo was killed by owners of unfenced crops. However, the owner of a buffalo or an ox had the responsibility not to let his animal stray at night as the animals might be killed by the owners of vegetable farms or rice-fields without compensation. This can be seen from Clause 43.3 of the *Undang-Undang Melaka* as below:

All cultivators should fence (their fields) properly and make ditches around them. If a buffalo or oxen or a goat enters (the field), you are not to stab it.

At night, the owner of the buffaloes or oxen should not let (the animals) stray about. If (an animal) is allowed to stray and it enters someone else's garden or rice-field, whether irrigated or not, if it is stabbed to death by the owner of the garden or the rice-field, the owner of the buffalo or ox has to suffer the loss.

If a man stabs a buffalo or an ox in the daytime, he must pay twice the (original) value in compensation, because it is customary for a buffalo or an ox or a goat to be set free at daybreak to search for food.

Since livestock had the freedom to roam freely in daytime, it was pertinent for the farmers to ensure that their properties were properly fenced and the entrance gate to their lands were properly closed. Otherwise, if a farmer stabbed the animal, he was required to compensate the owner of the livestock twice the value of the animal which was stabbed.

If a farmer was negligent or failed to put up the fences causing the crops of others to be eaten by animals, he would have the responsibility to replace other farmers' crops. This can be seen from Clause 22.2 of the *Undang-Undang Melaka*:

Concerning a piece of land under cultivation: if other people have fenced (the land) except one person who fails to do so, and the rice-crops are eaten by pigs or buffaloes, he (the person who was negligent) has to restore the other's rice-crops (damaged) through his negligence, as he did not fence his piece of land. If the whole rice-crop is eaten by the animals, (he has) to compensate for all of it. Such is the law.

It was therefore important for the farmers to ensure that their fences were properly installed and maintained as their negligence could result in having to pay for other farmers'

damaged crops. As fences were important to farmers, there was also a risk that it might be stolen by thieves. Clause 22.3 of the *Undang-Undang Melaka* went on to state that if the thief was caught by the owner of the property, the weapon on his body could be seized by the owner by evidenced by the provision below:

Rules pertaining to people who steal the fences of a *huma* (rice-field) or somebody else's (farm) produce; if he (the thief) is encountered by the owner (of the property), whatever he (the thief) carries with him shall be forfeited, be it a kris, a knife, or a sword, all shall be taken (from him) and (the thief) will be bound and brought to his master. Such is the law.

These four provisions in *Undang-Undang Melaka* illustrated the importance of the need to fence up one's crops and the value of the fences in the early days.

2. *Undang-Undang Johor or the Laws of Johore*

One of the translation works for *Undang-Undang Johor* or the Laws of Johore was done by J. R. Logan.⁵ *Undang-Undang Johor* had similar provisions to *Hukum Kanun Melaka*, where Clause 22.2 and Clause 22.3 of *Hukum Kanun Melaka* shared the same offences and punishment as in some of the provisions stated in the Laws of Johore. As such, the writer will not discuss the relevant rights to properties and the importance of fences in *Undang-Undang Johor* as such discussion would be redundant.

⁵ Logan, J. R., *A Translation of the Malayan Laws of the Principality of Johore*, 9 JIAEA (1855), pp. 71-90, reprinted in *Readings in Malay Adat Laws*, (Singapore: Singapore University Press, 1970), p. 71.

3. *Undang-Undang Kerajaan or the Malay Digest*

Undang-Undang Kerajaan or the *Malay Digest* was published in 1948. It was compiled for Sultan of Pahang, Sultan 'Abd al-Ghafur Muhaiyu'd-din Shah who ruled between 1592 and 1614. John E. Kempe and R.O. Winstedt edited the text based on Maxwell's bequest manuscript 17 and manuscript 20 in the library of the Royal Asiatic Society, London.⁶ Manuscript 17 was copied in 1879 and manuscript 20 was copied in 1884. Some of the provisions were derived from Islamic *Shafii* law, while the rest were customary laws which were not related to Islamic teachings. Clause 67 of the digest was omitted, being similar to Clauses 25-27 of *Undang-Undang Melaka*.⁷ The digest was purportedly a guide to the rulers of Pahang, Perak and Johor, although there was a separate interpretation for the state of Johor as discussed above. Perak also had its own *Ninety-Nine Laws of Perak*.

In *Undang-Undang Kerajaan*, fences and ditches were similarly important as they would determine the type of recourse available for the owner of fenced crops which was damaged by domesticated animals such as buffaloes. Another determining factor was whether the damage caused by the livestock was done during daytime or at night. This is seen in Clause 3 of *Undang-Undang Kerajaan*:

Cultivators must make fences and ditches. If a buffalo or ox enters a fenced enclosure by night and stabbed, half of the value of the beast has to be paid; but a sounder opinion holds that the beast's owner must pay full compensation for damage to cultivation.

If a buffalo enters an unfenced enclosure by night and is stabbed, the cultivator has to pay its full value and the owner of the beast pays nothing (for the damage of the crop); if the entry is by day and the beast is stabbed, twice its value has to be paid, though the animal is notoriously vicious, only half its value has to be paid and its owner must pay for damage to cultivation.

⁶ Kempe, John. E, Winstedt, R.O., "A Malay Legal Digest Compiled for 'Abd al-Ghafur Muhaiyu'din Shah, Sultan of Pahang 1592-1614 A.D.", [1948] *Journal of the Malaya Branch of the Royal Asiatic Society* Vol. XXI pt. 1, p. 1.

⁷ *Id.*, p. 2.

In *Undang-Undang Kerajaan*, it appeared that a cultivator who failed to erect or install fences to protect his crops could not claim damages from the owners of the livestock. Instead, he would have to pay compensation to the owners of the livestock, which was double in value of the animals if the animals were stabbed at night.

Apart from that, Clause 56 stated that if an owner of the fenced rice-field failed to close the gate of the fences at night and the animals destroyed the crops, the rice planter must bear his own loss as the act was due to his fault as can be seen here:

...When a beast is being conveyed and is being driven out or dragged, compensation is paid for goods destroyed. If it is at night and the beast has no keeper, compensation is paid; if it is daytime, no compensation is paid for rice-field or plants.

If it is the fault of an owner for not looking after his beast, he pays compensation; but if the gates of a fenced rice-field are not shut, it is the fault of the rice planter. ...

Another relevant provision concerned the act of trespassing committed by humans. The trespasser who trespassed at night on unfenced property could be killed.⁹ This can be seen from Clause 4 of *Undang-Undang Kerajaan*:

A trespasser on house property by night may be killed. A received opinion is that the trespasser should be captured and that full compensation must be paid for killing him, though a better opinion allows compensation of only half his value. If the trespasser runs away, he may be chased; but if he becomes invisible in the dark, the chase must be continued by others.

If a property is unfenced, the law is different. One must see if the trespasser is male or female, bond or free, and do not omit to enquire whether he is drunk or sober. He must be captured if possible and not killed. But unless one recognises the offender, one cannot chase him, except he is carrying off stolen goods, when he may be chased and killed. The penalty for trespass by day is capture, and if the trespasser resists, he may be killed. Any one except a lunatic may be killed for hammering at a house door by night without the inmate's permission.

⁹ Including a sane person who kept on hammering the door at night without the permission of the owner.

Again, the provisions in *Undang-Undang Kerajaan* can be seen to also emphasise on the existence of fences as a measure of protection of property. The emphasis can also be seen in *Undang-Undang Sembilan Puluh Sembilan of Perak*.

4. *Undang-Undang Sembilan Puluh Sembilan of Perak or the Ninety Nine Laws of Perak*

Undang-Undang Sembilan Puluh Sembilan of Perak (or the *Ninety Nine Laws of Perak*) was said to be “the most detailed of all digests”.¹⁰ It was written by Penghulu Teja Tuan Syed Yunus b. Syed Alwi and believed to be the oldest law in Perak, dating back to 1887.¹¹ Translation of this digest was done by J. Rigby who categorised the laws into four divisions, namely;¹²

- (a) public laws;
- (b) proprietary and other rights and duties;
- (c) slavery, sorcery and miscellaneous; and
- (d) relations of the sexes.

The provisions in *Undang-Undang Sembilan Puluh Sembilan of Perak* relating to the practice of gating were more tolerant towards the owners of livestock who damaged another person’s crops. A rice planter must ensure that his fences were strong, otherwise he

¹⁰ Hooker, M. B. (ed.), *Readings in Malay Adat Laws*, (Singapore University Press, Singapore, 1970), p. 53.

¹¹ Haji Mohd Khalid Johan, “Sejarah Penubuhan Majlis Agama Islam dan Adat Melayu Perak”, http://mufti.perak.gov.my/profil/profil_utama.htm, last date of access 18 May 2009.

¹² Rigby, J., “The Ninety-Nine Laws of Perak”, *Papers on Malay Subject*, (ed. Wilkinson, R. J.), Law, Part II (1908) pp. 20-56, reprinted in *Readings in Malay Adat Laws*, (Singapore: Singapore University Press, 1970), p. 57.

would also be liable for the damage caused by the livestock. The distribution of liability appeared to be more rational in this particular law. This can be seen from Clause 44 of *Undang-Undang Sembilan Puluh Sembilan*:

What is the law applicable to the case of a man holding high padi land whose crops are eaten by animals kept by another?" The Minister made answer, 'If the clearing is strongly fenced, so that shaking does not break down or move the fence, buffaloes and other animals that get in may be killed. If the animals first make a hole in the fence, the owner of the beasts can recover them if he is willing to pay the full damage done, otherwise he shall lose them. If they are unclean beasts, such as lions, the owner shall be liable [for all damage]. If there is no fence, he must pay half, as required by custom. If the beasts enter from the side of a person who has no fencing, and destroy crops within the land which has been strongly fenced, the man who has no fence pays one-third of the damage, the owner of the beasts two-thirds'.

Clause 44 demonstrates the importance for farmers to ensure that their *padi* crops were fenced and that the fences were properly maintained to prevent animals from trespassing. Another relevant provision is Clause 47 of the *Undang-Undang Sembilan Puluh Sembilan*, which specifically discussed the consequences of goats that ate plants in an area which was fenced and unfenced. Again, fences played an important role in order to determine the liability of owners of goats. Clause 47 of *Undang-Undang Sembilan Puluh Sembilan* states:

What is the law dealing with rearing of goats?' 'If they eat plants which are fenced in, the owner must pay for them. If there was no fence the owner need not pay anything, because it is the nature of such animals to browse within the kampong.

Clause 47 also acknowledged the nature of goats to roam across the village for food. As such, it was the responsibility of farmers to fence their crops.

5. *Undang-Undang Kedah or Kedah Laws*

Undang-Undang Kedah or Kedah Laws had four different codes, and a chapter dealing with the manufacture of the *bunga emas*¹³ which was a tribute to the King of Siam in return of protection from other great powers at that time. The part in the manuscript relevant to our topic is part II, which was known as “Tembera’ Dato Seri Paduka Tuan”, dated 1667. Clauses Five to Nine demonstrated the obligation of cultivators to fence their lands and the duty of buffalo owners to keep their animals at the grazing fields and not to let their animals stray. If the animals ate other people’s crops, the penalty and liability would depend on whether the property was fenced or not, and whether it occurred during day or night. In some cases, the owners of the fenced property were even permitted to kill the animal.

Concluding observation

It can be summarised that the early customary laws reflected the importance of crops as they were highly valued by the community, considering that crops were among the main sources of income for the villagers. It was considered as so important that animals who fed upon the crops which were properly fenced could be killed by the farmers. As such, fences were proven to be the most important instrument of protection of crops by farmers. The existence of fences also determined the rights and the extent of liabilities of the farmers, and also the liabilities of owners of animals with regards to compensation. The importance of fencing and gating in the early days was given legal recognition through these digests and the usage of fences is still relevant in the present days. The writer will proceed to

¹³ Winstedt, R.O., “Kedah Law”, [1928] Vol. VI, pt. 11 JMBRAS, p. 1.

examine the traditional and historical function of fences and gates, as fences have now become an essential feature in gated communities.

B. *Traditional Practice of Fencing by Native Malays and the Royals*

The practice of fencing and gating by the Malays can be traced to hundreds of years ago, as documented by written traditional laws. Since most laws were codified from custom and tradition, it can be assumed that the practice of installing and erecting fences and gates originated from the practice of cultivating crops. Compared to the present concept of gated communities, the usage of fences back then were mainly for protecting crops.

A common type of fence found in the rural areas was made from bamboo. In the old days, bamboos were a popular choice because they were strong and easily obtainable from the river banks. In Kelantan, this type of fence was called "*pagar sasak*" or woven bamboo fence, measuring between 1.21 metres to 2.134 metres.¹⁴ It was made from bamboos which were "split into half, plaited together until a broad of bamboos is formed".¹⁵ The completed fence was then pierced through the soil in order for it to stand, providing a solid foundation for the fence. The bamboo fence required some fixing from time to time due to the work of nature and animals, but it would generally last for years.

Fences made from bamboo were also popular in Perak. The house of Menteri of Larut at Bukit Gantang in the 1870s were found to be surrounded by stout fence of split bamboo,

¹⁴ Muhammad Afandi Yahya, *Simbolisme Dalam Seni Bina Rumah Melayu Kelantan*, (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1995), p. 58.

¹⁵ *Ibid.*

and were said to be so strong that they would throw off a musket-ball and used as stockades in wars.¹⁶ Sometimes, the fences were placed around the base of a house to enclose the open parts between posts, where an enemy could go in and pass his *keris* through the palm-strip flooring of the house, killing the occupant who was lying or sleeping on the floor.¹⁷

Perimeter fencing was installed on a bigger scale in the palaces. An example of a very old palace still in existence today is Jahar Palace or more popularly known as *Istana Jahar* in Kota Bharu. Istana Jahar was built in 1887 during the reign of Sultan Ahmad (1886-1889) as a wedding gift for his son, Long Kundur. Long Kundur later succeeded him as Sultan Muhammad III (1889-1890).¹⁸ The palace, which was built near the Kelantan River was frequently used to hold traditional royal ceremonies on auspicious occasions under royal patronage before 1944.¹⁹ Like most palaces, it was surrounded by fences. The fences surrounding the palace were made from wood instead of bamboos. It was said that this wooden fences had successfully blocked the Kelantan River from entering the premise of the palace during a flood. Today, this palace serves as Museum of Royal Traditions and Custom and as tourist attraction.

During the reign of the Malay Sultanate of Malacca, palace played an important role as the centre of administration, other than being the residence for the sultan. It was thus crucial to ensure the safety and security of the palace especially since there were risks of enemy

¹⁶ McNair, J. F., *Perak and the Malays*, (Kuala Lumpur: Oxford University Press, 1972), p. 168.

¹⁷ *Ibid.*

¹⁸ "Sejarah Bangunan Muzium Adat Istiadat DiRaja Kelantan", Perbadanan Muzium Negeri Kelantan, http://kelantan.muzium.net/v2/index.php?option=com_content&task=view&id=19&Itemid=55, last date of access 15 May 2009.

¹⁹ *Ibid.*

attacks on Malacca. Construction of palace included erection of fences around the area, and the placement of guards assigned to protect the palace. Drains were dug around the fences and were either filled with water or traps.²⁰ This formed a double protection from the enemies and prevented or delayed their attempt of getting in. Some of the fences were made by banking the earth up into mound, or by arranging planks to form a fence called “*pagar sisik*”.²¹ However, not much is known about the city surrounding the Malacca palace.²²

C. *Forts and Ancient Cities*

Malacca was later attacked and eventually occupied by the Portuguese. The Portuguese then built a fort, known as *Porta De Santiago* or A Famosa. It was built by Alfonso d' Albuquerque in 1511. The Portuguese gathered their people inside the fort and lived within the walls of A Famosa. Inside A Famosa was a town. This multifunction composition is also known as *kota* in Malay, where many people were confined inside the fort and do almost all of their activities in there.

However, A Famosa was not the first town-cum-fort that was built in Malaysia. It is believed that between the seventh and the ninth century, there were approximately 90 forts in Peninsular Malaysia,²³ most of them used to function as towns. These old cities were

²⁰ Abdul Halim Nasir & Wan Hashim Wan Teh, *Warisan Seni Bina Melayu*, (Bangi: Universiti Kebangsaan Malaysia, 1997), p. 97.

²¹ *Id.*, p. 98

²² *Id.*, p. 103

²³ *Id.*, p. 105

built using combination of, among other, rocks, bricks, wood, cockles, honey, egg white and bamboos. Amongst the ancient cities discovered were²⁴:

- (a) *Kota Aur* in Kedah, built approximately in year 1136;
- (b) *Kota Batang Mahang* and an unnamed city in Bukit Keledang, Terengganu built during the reign of Sultan Zainal Abidin I in the 18th century;
- (c) *Kota Serendah Sekebun Bunga* in Kelantan, built in the 15th century;
- (d) *Kota Kubang Labu* in Kelantan, built in the 18th century;
- (e) *Kota Bharu* in Kelantan, which still exists and is the city centre of Kelantan;
- (f) *Kota Biram* in Pahang, built in the 15th century;
- (g) *Kota Kara* in Johor, built in the 16th century;
- (h) *Kota Raja Mahadi*, *Kota Melawati* and at Tanjung Keramat in Kuala Selangor, all in Selangor and believed to be built in the 18th century and 19th century; and
- (i) *Kota Lukut* and *Kota Simpang* in Negeri Sembilan.

The practice of building fort and cities descended during the 20th century. During the Second World War, many forts were built by the Malay, British and Japanese soldiers to protect themselves against their enemies. The constructions of these forts were to allow the soldiers to use them as shields and did not function as towns. Some of the ruins of the forts can still be seen in Malaysia.

²⁴ *Ibid.*

D. *Kampung Baru*

When the country was threatened by communists in the 1940s, the Malayan High British Commissioner declared the state of emergency on 16 June 1948. Sir Harold Briggs ordered for people in the rural areas to be moved into *kampung baru* or new villages, where these people were supplied with the necessities and were prevented from having any contact with the communists. This strategy was called the Briggs Plan and these *kampung baru* were protected by the military and home guards.

During this period, an identification card system was used to ease the process of identifying whether a person was communist or not, since the communists were not given such cards. In 1954, almost 500 *kampung baru* existed with more than 500 000 people residing in it.²⁵ Perimeter fencing were build and access to the settlement were strictly guarded in order to prevent communists' intrusion. The construction of *kampung baru* in essence almost resembled the present gated communities in Malaysia.

Concluding observations

It can be observed that from the point of history, fences were built in the early days to protect the crops of farmers. The palaces of the royals were surrounded by fences as a protection against enemies. Some of the ancient cities also served as towns where business activities were carried out. The remains of these cities now serve as historical sites for the nation. In the 20th century, the usage of perimeter fencing was also used to protect the people from the threat of communists before Malaysia gained independence in 1957.

²⁵ Sekolah Menengah Kebangsaan Engku Husain, "Sejarah Semeniyh", http://smeh.tripod.com/sj_pkm1.htm, last date of access 18 May 2009.

(Australia), guarded residential complexes (Lebanon), lifestyle community (Holland), retirement community, secure compounds (Middle East) and secure urban estates.²⁷

In Malaysia, Yong Yung Choy, a well known local researcher in this area laid down the common features of a gated development to include:²⁹

- a) the owners of a gated community exercise some kind of control over their buildings, roads, car parks, gardens, community halls (if any), clubhouse (if any), pools (if any), lakes (if any), etc, and these are called amenities;
- b) the owners of a gated community will determine the usage and privileges assigned to the buildings and amenities;
- c) the owners of a gated community will maintain the use and repair of the buildings and amenities;
- d) the owners of a gated community will be liable for the upgrading or construction of the buildings and amenities;
- e) the owners of a gated community will be responsible for their own safety and protection;
- f) the owners of a gated community can control the movement of people and vehicles within its area; and
- g) in some gated communities, the owners expect to have the individual titles to their properties and expect private ownership of some of the land surrounding their properties.³⁰

²⁷ Singh, Gurjit, "Trials & Tribulations of Gated Community Housing Schemes", *Issues in Gated Community Housing Schemes*, Johor Bahru, 13 August 2005.

²⁹ Yong, Yung Choy, "Legal Issues if Gated Community Projects: Default of Parties, Exclusion of Liability and Right to Common Property", *Seminar on Gated Community Projects: Regulatory and Contractual Issues*, Kuala Lumpur, 28 July 2005, p. 2, quoted by Azlinor Suffian, "A Legal Perspective on 'Gated Communities' in Malaysia", *8th International Conference of the Asian Planning Schools Association*, Penang, 11-14 September 2005, p. 3.

The abovementioned criteria of gated communities put emphasis on the level of control and the liability of the owners of the houses in gated communities. Apart from the above description of gated communities by Yong Yung Choy, the definition of gated communities was offered by Azimuddin Bahari which has been referred to in Chapter One.³¹ The definition of gated communities offered by Azimuddin Bahari emphasises on the aspects of security in the neighbourhood which are restrictive in nature. However, there is another housing concept which is quite similar to gated communities in the sense that it also restricts public access to the area as an effort to provide security for the residents, known as “guarded community”.

In Malaysia, although condominiums and apartments can be considered as a type of gated community, the term “gated community” usually refers to landed houses. Although some developers may proclaim their developments as gated communities, in reality some of these developments can only be considered as guarded communities. The line of division between gated communities and guarded communities is not clear, particularly before the amendments to the Strata Titles Act 1985 (hereinafter referred to as “the STA”) in 2007 by Act A1290.

It was claimed that guarded communities also put emphasis on the security feature of the neighbourhoods, which may include perimeter fencing and provision for security patrol in the area, while gated communities offer additional features which include privatisation of

³⁰ The features listed above appear to be also applicable to multistorey developments.

³¹ The definition of gated communities by Azimuddin is reproduced here, where gated communities are “a cluster of houses or buildings that are surrounded by a wall, fence or a perimeter or any enclosure with entry or access of houses or buildings controlled by certain measures or restrictions such as guards, ropes, strings, boom gates, chains or blocks which normally includes 24-hour security, guard patrols, central monitoring systems and closed circuit televisions (CCTV).”

maintenance.³² The writer is however of the opinion that the most important feature that differentiates the developments of gated communities from guarded communities is the provision for perimeter fencing which is available in gated communities. Guarded community developments are usually limited to conventional housing with security features such as the provision of security guards and a guard post at the entrance of the housing area, while the developers of gated communities would go the extra mile to provide for perimeter fencing surrounding the area.

Besides perimeter fencing, another element which separates gated communities from guarded communities is the provision for additional facilities³³ compared to the standard facilities offered in conventional housing.³⁴ The applications to develop gated communities originate from the developers in the form of application for new housing developments. In contrast, applications for guarded communities came from the residents of conventional housing developments. As such, guarded communities usually do not have perimeter fencing surrounding the area. Unlike gated communities, there is no additional facility in guarded communities as most guarded communities retain the facilities offered in conventional housing developments.

However, not all housing developments developed as gated communities were equipped with additional facilities, despite having perimeter fencing surrounding the area. As mentioned earlier, the writer holds the view that perimeter fencing was an essential element of gated communities and the term “gated community” can survive even without

³² Thean, Lee Cheng, “What makes a landed, gated and guarded project?”, *The Star*, 18 April 2009.

³³ Such as club house, swimming pool and golf club.

³⁴ Such as open space with playground and jogging path.

the provision for privatisation of additional facilities and privatisation of maintenance.³⁵

Therefore, the term “gated community” before the amendments to the STA in 2007 should include landed housing developments with perimeter fencing and security features as defined by Azimuddin, and the provision for additional facilities is to be considered as additional, not mandatory feature of gated communities.

After the amendments to the STA, landed housing can now be issued with strata titles under the STA. As such, developments of gated communities after the amendments should adhere to the requirements and the concept of strata developments in the STA. Therefore, it is not sufficient to define gated communities as housing developments with perimeter fencing and security features only at this point since a proper gated community under the provision of the STA also includes provision of privatisation of maintenance of the common properties.³⁶

One concept that remains true before and after the amendments to the STA is that a gated community is also a guarded community in essence, but a guarded community is not necessarily a gated community.³⁷ As stated in Chapter One, the discussion in this dissertation only focuses on the concept of gated communities.

³⁵ This is in line with the guidelines for application for gated and for guarded communities as issued by the Selangor Housing and Real Estate Board in 2006, as discussed in Chapter Three.

³⁶ The STA provides, *inter alia*, for the concept of parcel, accessory parcel, provisional block, common property and management corporation.

³⁷ Most developers commonly advertised their housing developments as “gated community” or “gated and guarded community”.

IV. COMMON FEATURES OF GATED COMMUNITIES

For landed gated community developments, the writer found that the common features of such developments are the provision of security, protection of privacy, availability of recreational amenities, exclusive membership of golf club for the residents, architectural consistency, provision for green environment, low density and privatisation of maintenance of facilities. The abovementioned features might not exist in all gated communities. However, it may be said that gated communities typically include perimeter fencing, a single point of entry and exit, security measure by human patrol and availability of private facilities.

The following discussion further elaborates on the features relating to gated communities.

A. *Provision for Security*

Security is one of the main factors that is considered by homebuyers prior to purchasing a residential property. Police patrol alone is considered as no longer adequate for security and protection, especially in the urban areas where the crime rate is high. Developers realised the importance of this factor and thus placed an emphasis on security in their advertisements and brochures to lure purchasers into purchasing their products. Among the popular security features in gated communities are physical barriers, human surveillance, technological barriers and psychological barriers.

Physical barriers are crucial in gated communities. Locking one's private premises is no longer considered as sufficient to protect one's property from the burglars. Physical barriers create a perception that the residential area is hard to penetrate since the intruders would have to overcome the barriers. Thus, physical barriers sometimes also act as psychological barrier. There are several types of physical barriers, but the most important and relevant physical barrier in gated communities is the perimeter fencing. Perimeter fencing separates the residents of gated communities from outsiders and serves as the main obstacle in deterring trespassers. In some gated communities, the fences are made of concrete or of high quality wooden materials which surround the residential area on or near the borders. Apart from the perimeter fencing, boom gates are commonly installed at the point of entry and exit of most gated communities.³⁸

Human surveillance is also crucial for the security of gated communities. As mentioned before, developers of gated communities commonly highlight the feature of security in their advertisements particularly on the provision of 24-hour surveillance by the security guards. Some security guards conduct patrols accompanied by canines. Apart from that, a guard post is commonly placed at the main gate of the gated communities and the security guard will screen the visitors before allowing them in. In most upscale gated communities, the common entry procedures involve inquiring the visitors of the resident or the house in which the visitor wants to visit and requesting permission from the said resident. Some houses in gated communities such as Damansara Idaman⁴⁰ and D'villa Damansara Equestrian in Petaling Jaya,⁴¹ Kiara Hills in Mont Kiara⁴² and Setia Eco Park in Shah

³⁸ A boom gate is a one-bar metal barrier and is usually operated either by hand or electronically. Most boom gates in gated communities are controlled by the security guards.

⁴⁰ Developed by TA Properties Sdn Bhd.

⁴¹ Developed by Sunway City Berhad. Refer to Appendix 2.

Alam⁴³ have intercoms directly linked to the guardhouse. If the resident allows the visitors to come in, the security guards would enter the particulars of the visitors in the log book, stating the identity of the visitor, vehicle type and plate number as well as the identity of the resident. Previously, it was quite common for security guards in some gated communities to ask the visitors to leave their identification card or driving license. However, many complaints were lodged by the public as this practice was considered unlawful.⁴⁴ A better practice is for the residents to provide the security guards with a “permanent list” of visitors that are always welcomed by the residents.

The most advanced type of barrier nowadays is the technological barriers. More developers are offering advanced security system in Malaysia. Some of these state-of-the-art technologies are attached to or combined with the physical barriers, while other equipments function individually. In some gated communities, the perimeter fencing is charged with electricity, sometimes known as perimeter lighting system.⁴⁵ A few gated communities in Malaysia such as Sierramas West in Sungai Buloh, Sri Bukit Persekutuan in Kuala Lumpur⁴⁶ and Duta Nusantara in Mont Kiara⁴⁷ installed electronic fencing surrounding the residential area.⁴⁸ These electric fences are sometimes equipped with intruder detection system that allows the security guards to detect any activity which occurs at any section along the fence. Signs are usually put up near the fences to caution people about the existence of such electrical energy, which also serve as a harsh warning.

⁴² Developed by Sunway D’ Mont Kiara Sdn, Bhd.

⁴³ Developed by S P Setia Berhad Group.

⁴⁴ The legality of such practice is discussed in Chapter Four of the dissertation.

⁴⁵ Such technology was used in farms around United States of America and during the Nazi occupation to prevent the prisoners from escaping.

⁴⁶ Refer to Appendix 3 for photos of Sri Bukit Persekutuan.

⁴⁷ Refer to Appendix 4 for photos of Duta Nusantara.

⁴⁸ GS Teleconsult, <http://www.gforsberg.ws/gst/experience1.htm>, last date of access 21 July 2009.

Another type of technological barriers is to provide the residents with access card that needs to be tapped at a reading machine at the entry point, or a smart tag which allows the residents' vehicles to enter the residential area without stopping. Some gated communities require the residents to enter a pin code or access code instead of having to bring access cards each time the residents wish to go out or get in their gated neighbourhood. The problems with the usage of access code and pin code are the possibility of outsiders observing the access codes entered by the residents and in many cases, the access cards can be duplicated by other people.

Apart from that, there are gated communities which provide motion sensor that would trigger the alarms if disturbed. The developer for Ambang Botanic in Klang installed motion sensors at the entrance of the community⁴⁹ while the developer for Sierramas in Sungai Buloh was reported to install motion detector along the perimeter fencing.⁵⁰ Infrared sensors or cameras are also useful for night vision, however this is not normally done in Malaysia as it is unpopular and expensive although Aman Kiara in Bukit Kiara was reported to have offered such facility.⁵¹

The most commonly used electronic surveillance in gated communities is the closed-circuit television, popularly known as CCTV. The components of CCTV are directly linked via cables to the guard post or other security monitoring centre. Every transmission is recorded and the tapes are stored. If the security personnel see someone acting suspiciously, they

⁴⁹ "Spotlight: Gated and guarded concept comes to Klang", http://www.theedgedaily.com/cms/contentPrint.jsp?id=com.tms.cms.article.Article_21282, last date of access 2 December 2007.

⁵⁰ Prasad, Chris, "The land of gold gets richer", *New Straits Times*, 21 July 2007.

⁵¹ Lim, Lay Ying, "Paying for Peace of Mind", *New Straits Times*, 5 July 2003.

can respond immediately by going to the area where it occurs. Among gated communities equipped with CCTV are Valencia in Sungai Buloh⁵², Setia Eco Park in Shah Alam,⁵³ Beverly Heights in Ampang,⁵⁴ Bukit Kiara Residences⁵⁵ and Duta Tropika in Mont Kiara.⁵⁶ The usage of panic button is also becoming popular. Houses in Damansara Idaman in Petaling Jaya⁵⁷, Lake Edge in Puchong,⁵⁸ Valencia in Sungai Buloh⁵⁹ and Ambang Botanic⁶⁰ in Klang are equipped with panic buttons which are connected to the security post. The residents of Tropicana Indah Resort Homes in Kota Damansara⁶¹ could activate the alarm of their homes using their mobile phones.

The usage of physical barriers, human surveillance system and technological barricades might also operate as psychological barriers to gated communities at the same time. Any outsiders who wish to get into a gated community would have to go through a safety protocol, which involves revealing their personal identity to the security guards. Having fences and security guards who constantly patrol the area will be a major turn-off for criminals.

⁵² Developed by Gamuda Land Berhad.

⁵³ Developed by S P Setia Berhad Group.

⁵⁴ Developed by Timbunan Alam Resources Sdn. Bhd..

⁵⁵ Developed by Panorama Penting Sdn Bhd, Refer to Appendix 5 for photos.

⁵⁶ Developed by SP Setia Bhd. Refer to Appendix 6 for photos.

⁵⁷ Developed by TA Properties Sdn Bhd.

⁵⁸ Developed by YTL Land and Development Berhad.

⁵⁹ Perunding Eagles, "Security system in gated community", http://www.pece.com.my/p_gated_valencia.html, last date of access 21 July 2009.

⁶⁰ "Spotlight: Gated and guarded concept comes to Klang", http://www.theedgedaily.com/cms/contentPrint.jsp?id=com.tms.cms.article.Article_21282, last date of access 2 December 2007.

⁶¹ Previously known as Damansara Indah Resort Homes, developed by Dijaya Corporation Berhad. Refer to Appendix 7 for photos.

B. *Protection of Privacy*

Privacy is also the main draw of living in gated communities as non-residents are not allowed to enter the communities, unless they have legitimate reasons to do so. Gated communities also create privacy for the residents by controlling the flow of traffic into the neighbourhood area. As such, the residents are less exposed to outsiders and free from interference from unsolicited parties, such as door-to-door salesperson. Due to the privacy factor offered by gated communities, they are indeed very popular with the rich and famous who desire for such quality in their lives.

C. *Provision of Amenities*

In Malaysia, gated communities usually come with more and better facilities compared to the amenities available for conventional housing. The residents can expect better playground equipments and walking paths in gated communities. Apart from that, some gated communities also offer facilities such as swimming pool for the residents, for example Gita Bayu in Sri Kembangan, Sierramas West in Sungai Buloh, and Tanamera in Subang Jaya. Selangor Polo Country Club in Kota Damansara⁶² and Equine Park in Sri Kembangan⁶³ also have equestrian park for their residents. In other countries, several gated communities went further to provide for recreational park and mountain biking park for the residents, together with marina⁶⁴ for residents with yachts and boats. The level of

⁶² Owned by Selangor Polo Country Club Berhad. Refer to Appendix 7 for photos.

⁶³ Developed by Equine Capital Berhad.

⁶⁴ For example Marina Gardens in the Bahamas, the Springs in Dubai and Sentosa Cove in Singapore.

maintenance for these facilities is also considered as better compared to conventional housing.

D. *Exclusive Membership of Clubs*

Some developers of gated communities go to the extent of providing a golf course within the gated communities and provide membership to the residents, where it would usually be known as gated and golf community. For example, Tropicana Golf and Country Resort in Petaling Jaya provides the residents with golfing facilities and at the same time offers non-residents with the opportunity to become club members.⁶⁶ The developer of another gated community known as Valencia in Sungai Buloh provides the residents with exclusive residents-only golf course and clubhouse. This is a brilliant approach to promote their product, considering the possibility that some potential purchasers of gated communities might be keen golfers. This allows the residents to interact with each other and possibly their visitors, allowing them to enjoy the exclusivity and privacy of the club within their housing area. Apart from offering golf course, more developers of gated communities are also offering sports recreational area such as tennis court, fitness centre and equestrian centre.

⁶⁶ Developed by Dijaya Corporation Berhad. Refer to Appendix 8 for photos.

E. *Architectural Consistency*

Some gated communities have a strict rule of ensuring similar exterior of houses in gated communities. Guidelines concerning design and building in the neighbourhoods need to be strictly adhered to, for example restriction of the colour of the exterior, sizes of windows, exterior lighting and landscaping and to some extent, the colour and shape of the letter box. The architectural consistency is to ensure the physical harmony of the houses and to protect the property value of the development. Apart from signing a sale and purchase agreement, the homebuyers would have to sign a deed of mutual covenant where the developers would bind the purchasers to the restrictive clauses to preserve the physical appearances of the purchasers' houses.

F. *Green Environment*

Another attraction of gated communities is the assurance of being in an environment that is close to nature. Developers of gated communities would usually reserve a significant green area for the residents to enjoy. Big matured trees such as palm trees, and long hedges are commonly planted along the street to create a majestic look as the residents or their visitors enter the gated communities. Lush landscaping can project an image that the place is well taken care of by the developer or the management, thus creating a positive impression on the property.

Another appeal of gated communities is the waterfront and lakeside homes. Some gated communities have artificial lakes in the area, which have been artificially constructed to bring the element of water and tranquillity into the gated communities. An example of gated community with a lakefront is Lake Edge in Puchong and Ambang Botanic in Klang.

G. *Low Density*

Most gated communities would limit the number of houses that are built in that particular community, and as a result the closed neighbourhoods have few families living in the area. Therefore, the density of the area remains low. Due to this exclusivity, some gated communities have become a gathering zone for the rich and famous. The residents usually share the same status, position and wealth to be able to purchase a house in the gated community. In this situation, interaction of the residents in gated communities is limited to those who probably share the same financial and social standing.

H. *Privatisation of Maintenance of Facilities*

For properties in gated communities with conventional titles, the maintenance of the facilities is usually carried out by the developers as per the deed of mutual agreement signed between the developer and the purchasers. Properties in gated communities with strata titles are to be maintained by a management corporation appointed by the purchasers

after it is handed over by the developer.⁶⁷ Depending on the gated communities, the maintenance is administered either by the management corporation, the managing agent or the developer, and the purchasers may expect the standard to be higher than the services offered by the local authorities. The owners of gated communities have to pay maintenance fees every month. The fees are used by the management corporation or the developer to maintain the gated communities, including to ensure the safety of the premises and providing services such as garbage collection, street cleaning, landscaping, pool cleaning and as clubhouse fee.

Concluding observations

With all these features,⁶⁹ it is not surprising that gated communities are already gaining popularity in Malaysia. Fears of crime coupled with an interest of protecting one's residence encourage Malaysians to buy houses in gated communities. Apart from safety reasons, gated communities also provide an environmentally sound atmosphere along with luxurious lifestyle and privacy that was not offered in conventional housing developments. As long as the consumers are willing to pay for such exclusivity, the developers will continue to build more gated communities to cater for the demand from the public. As the developments of gated communities continue to grow over the years, gated communities can now be classified as a housing typology on its own and can be categorised into different types of communities.

⁶⁷ Before the homeowners receive their property title, the developer will carry the responsibility of maintaining the whole area. After one-quarter of the aggregate share units sold to the purchasers, the original proprietor has a duty to call for the first annual meeting for the management corporation. Refer to section 39, the Strata Titles Act 1985.

⁶⁹ Provision for security, protection of privacy, provision of amenities, exclusive membership, architectural consistency, green environment, low density and privatisation of maintenance of facilities.

V. TYPES OF GATED COMMUNITIES

The most authoritative classification of gated communities was provided by Edward J. Blakely and Mary Gail Snyder in *Fortress America: Gated Communities in the United States*⁷⁰ as mentioned in Chapter One, in which the authors categorised gated communities into three classes, which are 'Lifestyle communities', 'Prestige communities' and 'Security Zone'.⁷¹

Lifestyle communities refer to communities "where the gates provide security and separation for the leisure activities within",⁷² which include retirement community and communities with private golf course and clubhouse. Such amenities are provided as part of the gated communities and are undoubtedly the most expensive of all the communities, whether in terms of property price or maintenance fee. Among gated communities that come with these amenities in Malaysia are Aman Suria in Petaling Jaya and Kelab Golf Sultan Abdul Aziz Shah, as well as Monterez Golf & Country Club, both in Shah Alam.

Prestige communities are housing developments which lack the facilities provided in a Lifestyle communities, but possess all other criteria that Lifestyle communities have. This type of gated community has perimeter fencing, gates, tight security feature and privacy as are usually offered in a standard gated community. The price of these houses is lower compared to the price of houses in Lifestyle communities. The homeowners would still

⁷⁰ Blakely, Edward J. and Snyder, Mary Gail, *Fortress America: Gated Communities in the United States*, (Washington D.C.: Brookings Institution Press, 1997). This book has become the main reference for other writers on the topic of gated communities, especially in the United States of America.

⁷¹ Blakely, Edward J., Snyder, Mary Gail, "Putting up the Gates", <http://www.nhi.org/online/issues/93/gates.html>, last date of access 18 May 2009.

⁷² *Ibid.*

have to pay for monthly maintenance fees, but the amount is also not as costly as in Lifestyle community. Gated communities in Malaysia which fall under this category include Damansara Legenda in Petaling Jaya and Setia Eco Park in Shah Alam.

Security Zone refers to housing area gated by the residents themselves. It is not a developer-built community. Fear of crime, or escalating criminal incidents within their community triggered the residents of the neighbourhood to come together and form a neighbourhood watch, usually accompanied by security measures such as security guards boom gates. The legality of this approach is often questioned, but nevertheless these people feel that they have the right to do so for security reason. The writer is of the opinion that Security Zone resembles the establishment of guarded communities in Malaysia. Examples of Security Zones can be seen in Section U2 TTDI Jaya in Shah Alam and Taman Bangi Perdana, Bandar Baru Bangi.

The categorisation of gated communities in Malaysia shows that gated communities are gaining popularity in Malaysia. The developments of gated communities are on the rise not only in Malaysia but in other countries as well. The next part of the discussion focuses on the developments of gated communities in other countries and in Malaysia.

VI. DEVELOPMENTS OF GATED COMMUNITIES IN MALAYSIA

Gated communities are growing all over the world although this scheme is considered as relatively new in Malaysia. For example, the United States of America is famous for its gated community developments. In the late 19th century, St. Louis's residents gated their residents and street, followed by the East Coast and Hollywood upper classes in early 20th century and retirement communities in the 1960's and 1970's.⁷³ According to an analysis done by the Census Bureau's 2001 American Housing Survey, "more than seven million households — about six per cent of the national total — are in developments behind walls and fences", and "about four million of that total are in communities where access is controlled by gates, entry codes, key cards or security guards."⁷⁴ Gated community is also known as common interest development or CID, where it includes all types of housing that share common facilities, including detached houses, townhouse complexes and condominiums. One report estimated more than 40 million of Americans or almost one-sixth of the population live in CID,⁷⁵ while another study estimated that more than eight million people in the United States of America are living in gated communities.⁷⁶ Despite the development in the number of gated communities, some cities such as Ketchum⁸¹ in

⁷³ Blakely, Edward J. Snyder, Mary Gail, "Gating America", <http://www.design.asu.edu/apaproceedings97/blakely.html>, last date of access 18 May 2009.

⁷⁴ Nasser, Haya El, "Gated Communities More Popular, and Not Just For The Rich", *USA Today*, http://www.usatoday.com/news/nation/2002-12-15-gated-usat_x.htm, last date of access 18 May 2009.

⁷⁵ Briffault, Richard, "Protecting Public Interests in the Private City", *International Conference on Private Urban Governance*, Mainz, 5-9 June, 2002.

⁷⁶ Frantz, Klaus, "Gated Communities in US-American Cities", *Workshop Gated Communities – Global Expansion of a New Kind of Settlement*, Hamburg, December 1999.

⁸¹ Foley, Gregory, "Ketchum prohibits gated communities", *Idaho Mountain Express*, 22 December 2004. Also available at

http://www.mtexpress.com/index2.php?ID=200411477&var_Year=2004&var_Month=12&var_Day=22.

Idaho and Asheville⁸² in North Carolina had in effect banned gated communities from being developed.

In United Kingdom, not much is known about the actual number of gated communities. However, a research revealed that around 1,000 gated communities were discovered in England in 2002, despite the protests and criticism received from the public on such scheme.⁸³ In Australia, the first gated community developed was Sanctuary Cove in the Gold Coast, built in 1985. At that time, the local legislator had to legislate a special legislation just for Sanctuary Cove since its concept was considered as advanced and unique. Today, it is estimated that 100,000 Australian live in gated communities.⁸⁴ Among the areas that contain gated communities are Sunshine Coast, Brisbane, Gold Coast, Sydney, Melbourne and Perth.

In South Africa, gated communities that were initially built by housing developers from the beginning are known as "security villages", while self-gating community are known as neighbourhood gating.⁸⁵ Residents of a neighbourhood who prefer to gate their properties need to apply to the local authority for road closure. Many residential areas are doing this to prevent crimes in their locality. This practice is controversial in South Africa since gated communities are considered to promote social segregation that has long been avoided by this former apartheid country.

⁸² Millard, Hal L., "Asheville City Council: Council narrowly approves partisan city elections", *Mountain Xpress*, 20 June 2007. Also available at <http://www.mountainx.com/news/2007/062007city>.

⁸³ Atkinson, Rowland and Flint, John, "Fortress UK? Gated Communities, The Spatial Revolt of The Elites and Time-Space Trajectories of Segregation", *Gated Communities: Building Social Division Or Safer Communities*, Glasgow, 18-19 September, 2003.

⁸⁴ O'Sullivan, Matt, "Behind the urban curtains", <http://www.smh.com.au/news/National/Behind-the-urban-curtains/2005/03/03/1109700606439.html#>, last date of access 18 May 2009.

⁸⁵ Landman, Karina, "Alley-gating and Neighbourhood Gating: Are They Two Sides of The Same Face?", *Gated Communities: Building Social Division or Safer Communities?*, Glasgow, 18-19 September 2003.

In Malaysia, among the developments which are considered as pioneers of the landed gated communities are Country Heights in Kajang, Sierramas,⁹⁰ Sierramas West⁹¹ and Valencia⁹² in Sungai Buloh. In Kuala Lumpur, it was reported that in 2007 there were around 37 developments of gated communities which consist of 3,934 landed properties.⁹³ Although the Ministry of Housing and Local Government listed several housing developments as gated communities in their website,⁹⁴ the list was not comprehensive and did not include most developments of gated communities in Malaysia.

Advertisements on such concept are commonly seen in most newspapers and property magazines. The writer's research based on the advertisements and various newspapers and magazine articles in the Klang Valley from 2004 to 2009 revealed that there are over 100 gated community developments in the area.⁹⁵ These gated communities were either advertised as "gated community", "gated and guarded community" or developments with perimeter fencing with security system. Some of these gated communities were built as part of a mixed development with townhouses, condominiums or apartments and are part of bigger gated community developments by the same developer. Among the gated communities located in the Klang Valley are as in Table 2.1.

⁹⁰ The bungalow lots were offered in 1993.

⁹¹ Launched in 2001.

⁹² Also launched in 2001.

⁹³ Norazmin Adibah binti Othman, "Kriteria Perancangan Dalam Pembangunan Perumahan Komuniti Berpagar di Kawasan Dewan Bandaraya Kuala Lumpur", (Dissertation for Master of Science in Land Administration and Development, Universiti Teknologi Malaysia, Johor, 2007), p. 84.

⁹⁴ This list is included in Chapter Three of the dissertation.

⁹⁵ As at 15 October 2009.

Table 2.1: List of Gated Communities in the Klang Valley

	Name of gated community	Type of landed housing (excluding townhouse)	Location	Approximate starting price (RM)
1	Bandar Nusaputra	Semi-detached, terrace and bungalows	Cyberjaya	215,800
2	The Serenity	Terrace	Cyberjaya	802,888
3	The Promenade Lakeside	Bungalows lots	Cyberjaya	530,888
4	Aman Suria	Terrace, semi-detached and bungalows	Petaling Jaya	488,000
5	The Residence	Semi-detached and bungalows	Cheras	700,000
6	Lakeside Residences	Terraced and semi-detached	Puchong	325,000
7	Damansara Idaman	Bungalows	Petaling Jaya	2.5 million
8	Nadia Parkhomes	Terrace	Petaling Jaya	550,000
9	Adiva	Terrace	Petaling Jaya	381,000
10	Lexus Avenue	Bungalows	Damansara Jaya	Unavailable
11	Sri Banyan, Country Heights	Semi-detached and bungalows	Kajang	2.2 million
12	Changkat Kiara	Semi-detached and bungalows	Sri Hartamas	1.2 million
13	Seri Perkasa	Terrace	Puchong	260,000
14	Sierra Seputeh	Semi-detached and bungalows	Seputeh	1.32 million
15	Hijauan Residence	Semi-detached and bungalows	Cheras	698,800 for semi-detached, 1.1 million for bungalows
16	The Peak	Terrace and semi-detached	Cheras	1.3 million
17	Duta Tropika	Semi-detached and terrace	Kiara / Sri Hartamas	3 million
18	Seri Aman Heights	Semi-detached and terrace	Damansara	528,800
19	Seri Budiman (for Bumiputra only)	Terrace	Cheras	140,000
20	Greenwood Park	Terrace	Rawang	177,000
21	Sri Banyan 2	Semi-detached	Shah Alam	770,000
22	Setia Eco Park	Semi-detached, bungalow and bungalow lots	Shah Alam	614,000
23	Kiara Hills	Bungalows	Mont Kiara	4.5 million

Table 2.1, continued.

	Name of gated community	Type of landed housing (excluding townhouse)	Location	Approximate starting price (RM)
24	Kemuning Utama	Semi-detached	Shah Alam	668,000
25	Glenmarie Cove	Semi-detached and bungalows	Klang	400,000
26	KimCrest Puchong Hartamas	Terrace	Puchong	355,000
27	Bukit Rimau	Bungalows, semi detached and terrace	Shah Alam	Unavailable
28	Bangsar Damaisari	Bungalows and semi detached	Bangsar	Unavailable
30	Sri Bukit Persekutuan	Bungalows	Kuala Lumpur	3.9mil
31	Mutiara Indah	Terrace, semi-detached	Puchong	310,000
32	Kemuning Hills	Semi-detached and bungalows	Shah Alam	Unavailable
33	Sierramas Resort Homes	Bungalows, bungalow lots, semi detached and terrace	Sungai Buloh	1.9 million for bungalows, 235 per square foot for bungalow lots, 1.5 million for semi-detached, 1.7 million for terrace
34	Bungalow Villas	Bungalows	Shah Alam	763,000
35	Canal Gardens	Terrace	Shah Alam	337,800
36	Lakeside Terraces	Terrace	Shah Alam	353,400
37	Masera	Bungalows	Cheras	3.7 million
38	Valencia	Bungalows, semi detached and terrace	Sungai Buloh	2.2 million for bungalows
39	Duta Nusantara	Bungalows and semi detached	Mont Kiara	2.6 million
40	Gita Bayu	Bungalows	Sri Kembangan	708,000
41	Tropicana Golf and Country	Semi-detached and bungalow lots	Petaling Jaya	951,000 for semi-detached, 108 per square foot for bungalow lots
42	Tropicana Indah Resort Homes	Semi-detached, bungalows and bungalow lots	Petaling Jaya	750,000 for linked bungalows, 985,000 for semi-detached, 150 per square foot for bungalow lots

Table 2.1, continued.

	Name of gated community	Type of landed housing (excluding townhouse)	Location	Approximate starting price (RM)
43	D'Villa Damansara Equestrian	Bungalows	Kota Damansara	2.3 million for bungalow
44	Bayu Damansara	Terrace and semi-detached	Kota Damansara	Unavailable
45	Selangor Polo and Country Club	Bungalows	Kota Damansara	Unavailable
46	Beverly Heights	Semi-detached	Ampang	2 million
47	Idamansara	Bungalows and semi detached	Damansara Heights	2.9 million for semi-detached, 3.7 million for bungalows
48	Jelutong Heights	Semi-detached	Shah Alam	1 million
49	Sierramas West	Semi-detached and bungalows	Sungai Buloh	634,000
50	The Sovereign, Permai Park	Double storey semi-detached	Sri Kembangan	491,000
51	Emerald Enclave	Bungalows	Rawang	571,000
52	Aman Perdana	Semi-detached and bungalows	Meru- Shah Alam	273,000
53	Damansara Legenda	Semi-detached and bungalows	Petaling Jaya	1.3 million
54	Perdana Residence	Semi-detached and bungalows	Selayang	700,000
55	Amarin Kiara	Semi-detached and a single bungalow	Mont Kiara	1.97 million
56	Vista Mas	Bungalows	Cheras	2.8 million
57	Setia Eco Park	Semi-detached and bungalows	Shah Alam	614,00 for semi-detached, 912,000 for bungalows
58	Laman Oakleaf	Semi-detached and terrace	Ampang	424,824
59	AmanSari	Semi-detached and bungalows	Puchong	1 million for semi-detached
60	Mutiara Damansara	Terrace, semi-detached and bungalows	Petaling Jaya	1.3 million for bungalow, 843,000 for semi-detached
61	Duta Kensington Parkhomes	Terrace	Hartamas	948,600
62	Saujana Glenhill	Semi-detached and bungalow lots	Shah Alam	1.3 million
63	Aman Kiara	Bungalows	Bukit Kiara	2.5 million

Table 2.1, continued.

	Name of gated community	Type of landed housing (excluding townhouse)	Location	Approximate starting price (RM)
64	Saujana Maplewood	Semi-detached	Shah Alam	1.6 million
65	Desa Utama	Terrace	Bandar Utama	Unavailable
66	The Grove	Link bungalows and bungalows	Petaling Jaya	3 million for link bungalows, 3.4 million for bungalows
67	Sutra Bayu	Semi-detached and bungalows	Sri Kembangan	850,000 for semi-detached
68	Seputeh Heights	Bungalows	Seputeh	138 per square foot
69	Mutiara Seputeh	Semi-detached and bungalows	Seputeh	1.6 million
70	Desa Seputeh	Terrace	Seputeh	1.1 million
71	Seputeh 1128	Bungalows and bungalow lots	Seputeh	130 per square foot for bungalow lots, 1.8 million for bungalow
72	Tiara	Terrace	Bandar Sunway	373,888
73	Montez Golf and Country Club	Semi-detached, bungalows and bungalow lots	Shah Alam	550,000 for semi-detached, 290,000 for bungalow lots
74	Sejati Hill Villa	Bungalows	Cheras	944,130
75	The Rise	Semi-detached and bungalows	Sri Kembangan	394,208 for semi-detached, 1.1 million for bungalows
76	Tanamera	Terrace and semi-detached	Subang Jaya	1 million for semi-detached, 600,000 for terrace
77	Mesra Terrace	Semi-detached	Segambut / Duta	1.28 million
78	Lake Fields	Terrace	Sungai Besi	380,000
79	Impian Bukit Tunku	Bungalows	Bukit Tunku	5 million
80	Saujana Akasia	Bungalows	Sungai Buloh	422,888
81	Taman Megah 2, Cheras Perdana	Terrace	Cheras	500,000
82	Glenmarie Court	Semi-detached and bungalows	Shah Alam	1.6 million for semi-detached, 2.5 million for bungalows
83	Glenmarie Residence	Bungalows	Shah Alam	2 million

Table 2.1, continued.

	Name of gated community	Type of landed housing (excluding townhouse)	Location	Approximate starting price (RM)
84	The Aldea	Bungalows	Seputeh	515 per square foot
85	Seventy Damansara	Bungalows	Damansara Heights	6.23 million
86	KiPark Cheras	Terrace, semi-detached and bungalows	Cheras	428,800 for terrace, 880,800 for semi-detached and 1.5mil for bungalows
87	Bangsar Hill	Bungalows	Bangsar	4.6 million
88	Hartamas Heights	Bungalows and bungalow lots	Sri Hartamas	129 per square foot for bungalow lots
89	Villa Mont Kiara	Bungalows	Mont Kiara	4.9 million
90	Flora Murni	Bungalows and semi detached	Mont Kiara	285 per square foot
91	Puncak Kiara	Bungalows	Mont Kiara	4 million
92	Tijani, Kenny Hills	Bungalows and semi detached	Bukit Tunku	2.57 million for semi-detached, 4.71 million for bungalows
93	Sunway Rahman Putra	Terrace	Sungai Buloh	611,000
94	Kota Villa	Semi detached	Damansara Heights	Unavailable
95	Seri Beringin	Bungalow lots and semi detached	Bukit Damansara	306 per square foot for bungalow lots, 1.7 million for semi-detached
96	Bukit Kiara Residences	Bungalows and semi detached	Mont Kiara	3 million for semi-detached
97	Villa Aseana	Semi detached	Mont Kiara	2.7 million
98	Damansara Idaman	Bungalows	Petaling Jaya	3.2 million
99	The Ara Bangsar	Bungalows	Bangsar	1.77 million
100	Lake Edge	Terrace, semi-detached and bungalows	Puchong	330,000
101	Zenia Parkhomes	Garden terraces	Kuala Lumpur	367,999
102	Kemuning Residences	Bungalows	Kota Kemuning	728,800
103	Nilam Terraces	Terrace	Puchong	348,000
104	Ametis Terraces	Terrace	Puchong	398,000

Table 2.1, continued.

	Name of gated community	Type of landed housing (excluding townhouse)	Location	Approximate starting price (RM)
105	Subang Heights	Bungalow lots	Subang Hi-Tech Park	79 per square foot
106	The Peak	Bungalow lots	Taman TAR	1.7 million
107	Cemerlang Heights	Bungalow lots	Ulu Klang	40 per square foot
108	One Residence	Bungalows	Cheras	700,000
109	The Valley	Semi-detached and bungalow	Ampang	2.5 million
110	Laman Seri	Semi-detached and bungalow	Shah Alam	2.3 million
111	Alam Sanctuary	Terrace, semi-detached	Seri Kembangan	283,000
112	Mutiara Puchong	Terrace	Puchong	353,400
113	Mutiara Indah	Terrace, semi-detached	Puchong	430,000 for semi-detached
114	Pesona Kemuning	Terrace	Shah Alam	388,000
115	Jade Hills	Bungalows and linked bungalows	Kajang	1.2 million
116	Ambang Botanic	Bungalow lots, bungalows, terrace and semi-detached	Klang	566,800 for bungalow lots
117	Casa Serdang	Semi-detached	Serdang	653,800
118	Bandar Puteri Puchong	Bungalows	Puchong	1.48 million
119	Aria @ Areca	Semi-detached	Kajang	882,000
120	Sg. Sering	Bungalows	Cheras	998,000
121	Bayu Kemensah	Bungalows	Ulu Klang	2.48 million
122	Equine Park	Semi-detached, bungalows and bungalow lots	Sri Kembangan	45 per square foot for bungalow lot
123	Laman Sanur	Terrace	Shah Alam	400,000
124	Anggun	Semi-detached and bungalows	Rawang	369,000 for semi-detached
125	One Legenda	Bungalows	Cheras	2.5 million

Source: The writer's own research based on various advertisements and written articles in the newspapers, magazines and the internet.⁹⁶

⁹⁶ Whenever possible, the price listed here is based on the initial starting price of the residential properties when the properties were first introduced by the developer. If such price is unavailable, the price of the properties in the secondary market as advertised by agents and house owners are used.

Table 2.1 shows that there are at least 125 gated communities in Malaysia. The trend of gated communities in Malaysia progressed from exclusively for bungalows and semi detached in the early developments to terrace houses. Based on the type of houses in present gated communities, it can be implied that gated communities are no longer restricted to those in the high income group.

However, the present trend also shows that housing price has risen steadily every year. In the previous decade, a house which cost RM1 million was uncommon, but now it is common to find property priced RM1 million and above. The price of terrace houses in Malaysia has also rose to almost 100 per cent compared to 20 years ago.⁹⁷ Therefore, although gated communities are now being extended to terrace housing, it might not be a conclusive indication that the middle or lower income group could afford to buy properties in gated communities. Despite this, more and more gated communities are being built each day by the developers and there is no indication that the developments of gated communities are slowing down.

VII. CONCLUSION

The practice of gating and fencing has evolved from being a tool to protect the produce of farmers to being a device to protect human beings from threats by the enemy and criminals. History also shows that towns or *kota* were built earlier in history to protect the citizens and as a place of business. It appears that fences were built as a form of protection

⁹⁷ The Valuation and Property Services Department, "The Malaysia House Price Index by House Type", http://www.jp-ph.gov.my/V1/index3service.php?versi=2&no_khidmat=3&no_item=9, last date of access 21 July 2009.

and as a response to the basic human instinct to defend themselves and their properties. Although foreign attack and communism is no longer an imminent threat in Malaysia, the need to protect one's safety is still considered as a priority.

Over the years, it can be seen that the common threat to the populace all over the world is crime. Some criminals would go to a great extent to commit their crimes; hence the arrival of gated communities appears to be the answer to minimise the vulnerability to crimes. The developers saw gated communities as a marketable concept and included other features to increase the commercial value of such housing. Gated communities generally receive good response from the public since such developments suit the lifestyle of the current generation.

Controversial as it might appear, the demand from the public and the developers has forced the government to allow gated communities. As more gated communities are being developed, it is pertinent to determine the effect of gated communities on the housing needs in Malaysia. Chapter Three will examine the various policies relating to housing in Malaysia and the steps taken by the local authorities on gated community developments.

CHAPTER THREE

GOVERNMENT POLICIES AFFECTING HOUSING DEVELOPMENTS

I. INTRODUCTION

The need for shelter is one fundamental right of every human. The right to shelter is protected by providing human beings with adequate housing, and this basic human right has been proclaimed by various countries around the world through several international declarations as a component of the right to a sufficient standard of living.

Studies regarding the emerging housing concept of gated communities and its impact on the society in the present and in the future have been conducted in countries such as the United States of America, England and South Africa. Many choose to stay in gated communities because they feel safer and secured, although the actual effectiveness of gated communities in reducing crimes is currently unsupported in Malaysia as no particular research was done to prove or disprove it.

Since most gated communities emphasise on low density housing, there is an issue of whether or not this type of housing development fulfils housing needs in Malaysia in general. Gated communities with low density and large private area may not be entirely productive for the country's housing growth as the land usage might not be optimum and are limited for the privileged few.

Given that gated community projects are booming in Malaysia, such developments may have a negative effect on the housing needs in Malaysia. It is therefore crucial to study

the approaches adopted by the authorities in dealing with gated community developments. There is also a concern that by having more gated communities in Malaysia, the government is denying the right of those from the low income group from purchasing affordable houses as gated communities are closely associated with high cost housing.

This chapter will look at housing as the basic need for every human being in Malaysia, in relation to the developments of gated communities. Part II of this Chapter discusses the importance and the recognition of housing as a component of human right while Part III explores the history and policies relating to housing in Malaysia. Part IV examines the housing needs in Malaysia and measures undertaken by the Malaysian government towards ensuring adequate housing for everyone. Since the local authorities are involved in approving or rejecting applications for gated community housing schemes in Malaysia, Part V of this Chapter will also look into their role as the planning authority according to the relevant laws. Part VI explores the approaches and the policies that were adopted by some local authorities in dealing with applications for gated communities before and after the legalisation of gated communities through the amendments of the Strata Titles Act 1985 by Act A1290 in 2007. Part VII concludes the Chapter.

II. RIGHT TO HOUSING AS BASIC HUMAN RIGHTS

The government of Malaysia recognised the right for shelter and housing remains one of the main priorities in the nation's developments as evidenced by the Ninth Malaysia Plan, where RM9.9 billion was allocated for the developments in the housing sector. The

importance of the right to housing is also recognised by the United Nations through its treaties and programmes. The United Nations has been working towards increasing the awareness of the importance of adequate shelter for all human beings globally by having the governments from various countries become signatory of specific treaties and monitoring their progress through the relevant bodies. The recognition of the right to housing on the international level was manifested in, *inter alia*, the Universal Declaration of Human Rights, followed by the International Covenant on Economic, Social and Cultural Rights and the introduction of the United Nations Human Settlements Program.

A. *Universal Declaration of Human Rights*

The Universal Declaration of Human Rights (hereinafter referred to as the “UDHR”) was adopted by the General Assembly of the United Nations on 10 December 1948 and was decreed as “a common standard of achievement for all peoples and all nations”¹ in its Preamble. It remains as one of the most important assertions ever taken by its members.

Article 25(1) of the UDHR states that:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, *housing* and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (Emphasis added.)

As stated in the UDHR, every human being deserves to have adequate housing for himself and his family. The UDHR is part of the International Bill of Human Rights which also consists of the International Covenant on Civil and Political Rights and its

¹ Universal Declaration of Human Rights 1948, GA Res 217 A (III), (1948). Also available at <http://www.un.org/en/documents/udhr>, last date of access 31 May 2009. The UDHR is recommendatory but could develop to generate customary laws in the context on international law.

two Optional Protocols, together with the International Covenant on Economic, Social and Cultural Rights.² On the whole, there are eight core international human rights instruments which were introduced following the UDHR, together with their own monitoring body to monitor the implementation of the treaty provisions in the relevant countries.³ One of the most relevant treaties relating to housing is the International Covenant on Economic, Social and Cultural Rights (hereinafter known as the “ICESCR”).

B. *The International Covenant on Economic, Social and Cultural Rights* (*“ICESCR”*)

The ICESCR, a human right treaty based on the Universal Declaration of Human Rights, was adopted on 16 December 1966.⁴ Article 11(1) of the ICESCR states:

The States Parties⁵ to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realisation of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

The ICESCR put an emphasis on the importance of adequate housing. The problem of inadequate housing is usually more apparent in the cities where the number of population is higher than the rural area due to urbanisation.

² Office of the High Commissioner for Human Rights, “International Human Rights Law”, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>, last date of access 4 June 2009.

³ Office of the High Commissioner for Human Rights, “International Law”, <http://www2.ohchr.org/english/law/>, last date of access 4 June 2009.

⁴ Malaysia is not a party to the ICESCR.

⁵ The phrase “States Parties” as mentioned in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights is referring to the countries in the covenant.

In order to promote adequate housing particularly in the cities, the United Nations General Assembly transformed the United Nations Commission on Human Settlements (Habitat) into a fully-fledged programme renamed as the United Nations Human Settlements Programme (hereinafter known as "UN-HABITAT").⁶

C. *United Nations Human Settlements Programme*

UN-HABITAT is the agency responsible in advancing the issue of human settlements to ensure adequate housing for all and the sustainability of developments. It was established in 1978 after the Vancouver Declaration on Human Settlements or the Habitat I conference in 1976. After Vancouver, the Istanbul Declaration on Human Settlements was signed in 1996 with the aim of providing "adequate shelter for all" and "sustainable human settlements development in an urbanizing world".⁷ This conference released an important political document which is known as the Habitat Agenda. The Habitat Agenda set up some guidelines and approaches on how to achieve sustainable development in urban areas and provide an in depth description of "adequate shelter".

Paragraph 60 of the Habitat Agenda defines "adequate shelter":

Adequate shelter means more than a roof over one's head. It also means adequate privacy; adequate space; physical accessibility; adequate security; security of tenure; structural stability and durability; adequate lighting, heating and ventilation; adequate basic infrastructure, such as water-supply, sanitation and waste-management facilities; suitable environmental quality and health-related factors; and adequate and accessible location with regard to work and basic facilities: all of which should be available at an affordable cost. Adequacy should be determined together with the people concerned, bearing in mind the prospect for gradual development. Adequacy often varies from country to country, since it depends on specific cultural, social, environmental and economic factors. Gender-specific and age-specific factors, such as the exposure of children and women to toxic substances, should be considered in this context.

⁶ United Nations General Assembly, "Strengthening the mandate and status of the Commission on Human Settlements and the status, role and functions of the United Nations Centre for Human Settlements (Habitat)", UN Res A/56/206, 56th session, 90th plen mtg, UN DOC A/56/206 (2002).

⁷ The Habitat Agenda, adopted by the United Nations Conference on Human Settlements (Habitat II), Istanbul, 14 June 1996, para 2.

Based on the definition, having adequate shelter is not to be interpreted as merely having physical structure of a dwelling, but its definition must be extended as to provide the house with every basic needs of a human being; with stability and security of living in one's home. The Habitat Agenda recognised the basic need of every individual, regardless of whether the individual has the ability to afford such facilities and services or not. In relation to the developments of gated communities in Malaysia, this suggests that security and safety of one's home should not be confined to the people who live in gated communities and should be extended to everyone. Countries are encouraged to promote a sound and effective shelter policy, focusing on the disadvantaged citizens.⁸ The Habitat Agenda was adopted by 171 countries, contains over 100 commitments and 600 recommendations on human settlements.⁹ Malaysia, however, has yet to ratify the Habitat Agenda to date.

Subsequently, the General Assembly of the United Nations held a special session for an overall review and appraisal of the implementation of the Habitat Agenda worldwide in June 2001. It was estimated that there were 100 million homeless people globally, mostly women and children.¹⁰ In their report on urban shelter and housing, it was reported that by the beginning of the third millennium, 1.1 billion of the world's city population will live in inadequate housing, mostly in slums and squatter settlements in developing countries.¹¹ According to the UN-HABITAT report known as the *Financing Urban Shelter: Global Report on Human Settlements 2005*, by the year 2030 three billion people making up about 40 per cent of the global population will need housing.¹² The

⁸ The Habitat Agenda, para 65.

⁹ UN-HABITAT, "The Habitat Agenda", http://ww2.unhabitat.org/declarations/habitat_agenda.asp, last date of access 8 June 2009.

¹⁰ N'Dow, Wally, "United Nations Conference on Human Settlements (Habitat II) Press Release", <http://www.un.org/Conferences/habitat/unchgs/press/women.htm>, last date of access 31 May 2009.

¹¹ *Ibid.*

¹² United Nations Human Settlements Programme (UN-HABITAT), "The Housing Crisis", http://www.unhabitat.org/documents/media_centre/ghs/GRHS05F2.pdf, last date of access 31 May 2009.

annual need for housing in urban areas of developing countries alone was estimated at around 35 million units between 2000 and 2010,¹³ and the underprivileged societies were actually spending more percentage of their income for rent.¹⁴ Therefore, rapid urbanisation must be met with sufficient and adequate housing in urban area, in order to prevent any future problems in relation to the lack of housing in the cities.

Although Malaysia had not ratified the ICESCR and is not a member of the UN-HABITAT, it has been reported that Malaysia is the only country in Asia where the “levels of inequality are more or less equal in urban and rural areas”¹⁵ due to its pro-poor policies since 1970’s.¹⁶ Malaysia also has low slum prevalence at less than ten per cent.¹⁷ The Malaysian government has been involved in a lot of efforts to provide adequate housing for the citizens especially in the urban areas, where land space is limited compared to the rural areas.

Currently there is no single or uniform housing policy in Malaysia as the National Housing Policy is still at the stage of formulation by the Ministry of Housing and Local Government.¹⁸ However, there are several specific policies relating to housing. Although most of these policies depend on the present social and economic situations in Malaysia, the historical developments of Malaysia also play a crucial part in the shaping of these policies as will be discussed below.

¹³ N'Dow, Wally, *loc.cit.*

¹⁴ Their rent-to-income ratios are higher than what the people in highly industrialised countries were paying, where these underprivileged people spent roughly around 30 to 40 per cent of their incomes. United Nations Centre for Human Settlements (UN-HABITAT), *The State of the World's Cities Report 2001*, (Nairobi: United Nations Centre for Human Settlements (Habitat), 2001), p. 31. Also available at <http://ww2.unhabitat.org/istanbul%2B5/30.pdf>, last date of access 31 May 2009.

¹⁵ United Nations Human Settlements Programme (UN-HABITAT), *State of the World's Cities 2008/2009: Harmonious Cities*, (London: Earthscan, 2009), p. 74.

¹⁶ *Id.*, p. 52.

¹⁷ *Id.*, p. 101.

¹⁸ As at 29 March 2010. Refer to National Housing Department website, <http://ehome.kpkt.gov.my/ehome/informasi/dasarperumahan.cfm>, last date of access 30 March 2010.

III. HISTORY AND THE SHAPING OF POLICIES WITH REGARD TO HOUSING IN MALAYSIA

The ministry responsible for housing in Malaysia is the Ministry of Housing and Local Government (hereinafter referred to as “the Ministry”).¹⁹ In its website, the Ministry is represented to “provide a healthy, safe, peaceful and beautiful environment combined with socio-economic growth for a progressive and disciplined Malaysian society”.²⁰ Among the objectives of the Ministry are:²¹

- (a) to establish and implement comprehensive and uniform nationwide rural and urban planning to strengthen and promote physical, social, economic and environmental development;
- (b) to encourage, develop and guide Local Authorities to establish high quality urban, social and recreation services and to provide opportunities for uniform economic growth;
- (c) to ensure adequate comfortable and balanced housing development, complete with social and recreational facilities;
- (d) to ensure the safety of life and property through preventive and supervisory services regarding fire and dangerous materials, efficient and effective emergency and rescue services and the raising of public awareness and education on fires and fire prevention; and
- (e) to develop landscaping, parks, and quality recreational facilities and achieve the objective of making Malaysia a garden nation.

¹⁹ The Ministry was set up on 24 May 1964 as the Ministry of Local Government and Housing. Following a Cabinet reshuffle on 18 July 1978, the Ministry was renamed the Ministry of Housing and Local Government as the result of a merger between the Ministry of Housing and Rural Development and the Department of Local Government which was previously part of the Ministry of Local Government and the Federal Territory.

²⁰ Ministry of Housing and Local Government, “Corporate Info”, http://www.kpkt.gov.my/kpkt_en/main.php?Content=vertsections&SubVertSectionID=26&VertSectionID=4&CurLocation=4, last date of access 21 May 2009.

²¹ *Ibid.*

The Ministry also plays an important role in planning and implementing the government's policies to achieve the country's goal to become a developed nation in year 2020, through Vision 2020. Other than that, the Ministry is also responsible to provide adequate housing for all Malaysian citizens, particularly those from the lower income group in the form of low-cost housing. Among other responsibilities of the Ministry are setting up the local authorities, providing efficient fire and rescue services and ensuring that the implementation of physical, social, economic, and town and country environment planning are in accordance with the Town and Country Planning Act 1976.²² Local authorities play a major role in town planning in Malaysia and are the main authority when in approving applications for housing projects by developers.

The Ministry also has the responsibility to formulate the National Housing Policy. As explained before, this policy has yet to be in existence. However, several other policies implemented by the Malaysian government have included housing issues in Malaysia. They are the New Economic Policy (hereinafter referred to as the "NEP"), the National Development Policy (hereinafter referred to as the "NDP") and presently, the National Vision Policy (hereinafter referred to as the "NVP") under the Third Perspective Plan (hereinafter referred to as the "TPP").²³ The implementation of these policies in the past three decades had led to the high rate of urbanisation in Malaysia.

A. *The New Economic Policy ("NEP")*

The housing progress and policies in Malaysia are the result of formulation based on the history of the nation. When Malaysia achieved its independence in 1957, the economy

²² Act 172.

²³ The Economic Planning Unit, Prime Minister's Department, Mid-Term Review of the Ninth Malaysia Plan 2006-2010, p. 3, <http://www.epu.gov.my/mtr-rm9/html/english.htm>, last date of access 8 June 2009.

was commodity-based and relied mainly on rubber and tin, which contributed about 70 per cent of total export earnings, 28 per cent of government revenue and 36 per cent of total employment.²⁴ The newly independent country focused on diversifying and modernising agricultural production in addition to encouraging rural development, while the *laissez faire* policy established since the British ruling was continued.

Despite gaining strength in the economic sector, the persistent prevalence of poverty and income disparity between the various ethnic groups had provoked tensions within the society.²⁵ The riots that took place on 13 May 1969 had called for formulation of policies to address those issues. The NEP was launched in 1971 as a response to the unpleasant incident. It was implemented from year 1971 to year 1990; focusing on eliminating poverty, restructuring society and eradicating race identification through the economy. Among the efforts taken by the government in order to solve the problems relating to poverty and various social issues were to provide adequate housing to the poor and to promote the process of urbanisation by encouraging migration of the underprivileged people to the cities.

After the period of NEP ended in 1990, its socio-economic engineering goals were not fully achieved. Realising that more time was needed for the country to achieve this, on 17 June 1991 the Prime Minister of Malaysia announced the adoption of the NDP which “maintained the basic strategies of the NEP but introduced several shifts in specific policies to eradicate extreme poverty, increase Bumiputra participation in the modern sectors of the economy, place greater reliance on the private sector to generate economic

²⁴ Economic Planning Unit, Prime Minister’s Department, “Recent Economic History”, <http://www.epu.jpm.my/New%20Folder/RecentEconomicHistory.htm>, last date of access 24 May 2007.

²⁵ *Ibid.*

growth and income, and emphasise human resource development.”²⁶ The NDP is discussed below.

B. *The National Development Policy (“NDP”)*

The main aim of the NDP was to ensure the unity of the nation in order to strengthen the economic and political stability in Malaysia. The NDP was for a period of ten years, from year 1991 to year 2000 and was part of Vision 2020 long term programme in making Malaysia a fully developed country by year 2020. It is forecast that if the strong economic development of Malaysia could be maintained, the country will be on its path to achieve the status of a developed country by year 2020.

The government resumed the strategies taken by the NEP, focusing on fulfilling the objectives to:

- (a) create optimum balance between the aim of economic growth and equal distribution;
- (b) ensure equal developments in the major economic sector;
- (c) reduce and eventually wipe out the social and economic inequalities to encourage fair sharing of the benefits gained from Malaysia’s growth;
- (d) encourage and strengthen the national integration by reducing the wide gap of economic progress between States, and between the urban and rural areas;
- (e) develop a progressive society where the community can enjoy a wonderful life and possessing high social values, together with positive spiritual ideals and patriotism;
- (f) develop human resources with strong discipline and high productivity level, and to develop the skills required to face the challenge of industrialisation via

²⁶ Soon, Ivy, “Malaysia Foresight Shows”, *The Star*, 30 January 2005.

encouraging a culture of excellence without affecting the reorganisation of society;

(g) make science and technology as the core of socio-economic development and planning; and

(h) ensure protection of the environment and ecology while developing the economy.

Similar to the NEP, one of the strategies of the NDP is to eradicate poverty by improving housing programme. The Prime Minister later tabled the next development plan for Malaysia on 3 April 2001, known as the Third Outline Perspective Plan for the period between 2001 and 2010.

C. *The National Vision Policy ("NVP")*

With the introduction of the TPP, the NVP was officially launched and among its main objectives is to strengthen the nation's economic resilience and competitiveness. The NDP and the NVP share a similar focus to eliminate poverty and promote an equitable society, especially through housing development. Among the strategies planned were introducing policies regarding housing industries, increasing human resources in the housing sector, encouraging development of technology in the housing segment, and reducing structure inequalities between urban housing and rural housing, and also between developed and undeveloped territories.²⁷ With the increasing number of the population and the encouragement by the Malaysian government, the rate of urbanisation in the country has been steadily on the rise.²⁸ Along with the high rate of urbanisation in

²⁷ Mohd Razali Agus, *Perumahan Awam di Malaysia : Dasar dan Amalan*, (Kuala Lumpur: Utusan Publications & Distributors, 1st ed., 2001), p. 1.

²⁸ Department of Statistics Malaysia, "Population and Housing Census 2000", http://www.statistic.gov.my/English/frameset_pressdemo.php, last date of access 2 July 2005. The level of urbanisation in Malaysia is discussed in Part D of this Chapter.

the cities, the government has to ensure that there would be enough housing for the people and must focus on its goal to eradicate poverty, including urban poverty. The urbanisation process in Malaysia is discussed as below.

D. *Urbanisation in Malaysia*

Early urbanisation process in Malaysia developed as “a result of gradual transition of a village to an expanded centre of political power focused on a local sultan and a nucleus of trading activity”.²⁹ Prior to independence, immigration from outside of this country was caused by employment opportunities being offered due to the high demand of supplies in tin and rubber. In order to deter the influence of communism, relocation of rural people to “new villages” or *kampung baru* such as in Semenyih, Dengkil and Hulu Langat near the urban centre had also increased the urbanisation rate. In the 1970s and 1980s, the process of urbanisation was rapid as the government encouraged the rural population to move to the city in order to create a balance between races living in the city. Urbanisation was also caused by lack of opportunities in the rural areas and the predilection of working in the cities by the younger generation.

The process of urbanisation in Malaysia is steady and yet rapid. The 2000 Census showed that with regards to urbanisation, the urban population segment had increased to 62.0 per cent in the 2000 Census, compared to 50.7 per cent in 1991. The Federal Territory of Kuala Lumpur recorded an astonishing, but not a surprising, rate of urbanisation at 100 per cent increase. This was foreseeable since Kuala Lumpur, being the nation’s capital and the centre of trade attracted most citizens to work and live there.

²⁹Fee, Chen Voon (ed.), *Encyclopedia of Malaysia: Architecture*, (Singapore: Archipelago Press, 1998), p. 60.

The next highest rate of urban population growth was seen in Selangor with 87.6 per cent and Penang with 80.1 per cent.³⁰ A recent report in the Ninth Malaysia Plan also demonstrated the rapidness of urbanisation in Malaysia as shown by Table 3.1.

Table 3.1: Population and Urbanisation Rate by State, 2000-2010

State	Population (million)			Urbanisation rate (%)			Average annual growth rate of urban population (%)	
	2000	2005	2010	2000	2005	2010	8MP	9MP
Northern region								
Kedah	1.67	1.85	2.04	39.1	39.6	40.3	2.4	2.2
Perak	2.09	2.28	2.44	59.1	59.3	59.3	1.6	1.6
Perlis	0.21	0.23	0.23	34.0	35.1	35.9	2.2	2.2
Penang	1.33	1.50	1.60	79.7	79.8	80.0	2.0	1.9
Central region								
Malacca	0.65	0.72	0.79	67.5	70.6	73.4	2.9	2.7
Negeri Sembilan	0.87	0.96	1.03	54.9	56.3	57.4	2.3	2.1
Selangor	4.19	4.87	5.31	87.7	88.4	89.1	2.7	2.4
Federal Territory of Kuala Lumpur	1.42	1.62	1.70	100.0	100.0	100.0	1.9	1.5
Southern region								
Johore	2.76	3.17	3.46	64.8	66.5	67.7	2.9	2.6
Eastern region								
Kelantan	1.36	1.51	1.67	33.5	33.4	33.3	2.0	2.1
Pahang	1.30	1.45	1.57	42.0	43.5	44.6	2.7	2.5
Terengganu	0.90	1.02	1.12	49.4	49.8	50.3	2.6	2.6
Sabah	2.60	3.13	3.33	48.1	49.8	51.6	3.1	2.9
Federal Territory of Labuan	0.08	0.09	0.09	76.3	77.6	78.6	2.2	1.8
Sarawak	2.07	2.34	2.56	48.1	49.5	50.6	2.8	2.4
MALAYSIA	23.49	26.75	28.96	62.0	63.0	63.8	2.5	2.3

Source: The Economic Planning Unit, Prime Minister's Department, Ninth Malaysia Plan, 2006-2010, p. 361.

Table 3.1 demonstrates that during the Eighth Malaysia Plan period from 2001-2005, the urbanisation rate has increased to 63 per cent, compared to 62 per cent in year 2000. It was also reported that Kuala Lumpur again recorded a 100 per cent increase in its urbanisation rate. The second State with the highest rate of urbanisation was Selangor

³⁰ Department of Statistics Malaysia, "Population and Housing Census 2000", http://www.statistic.gov.my/English/frameset_pressdemo.php, last date of access 2 July 2005.

with of 88.4 per cent increase, followed by Penang with 79.8 per cent. The lowest rate of urbanisation was recorded by Kelantan (33.4 per cent), Perlis (35.1 per cent) and Kedah (39.8 per cent). Therefore, it is imperative for the government to ensure that there is adequate housing for the people especially in Kuala Lumpur and in the State of Selangor.

A large number of Asian countries are promoting a disseminated pattern of urbanisation by investing in small and intermediate-sized cities to achieve a more balanced urban development.³¹ In Malaysia, the extensive method of planned urbanisation has created a number of new towns which are also known as “Bandar Baru” around the country, aimed to reduce pressures in major urban cities especially Kuala Lumpur and Johore Bahru. Among the new towns around the country are:

- (a) Shah Alam, Subang Jaya, Bangi, Kota Damansara, Lembah Bernam, Kuala Selangor and Selayang in Selangor;
- (b) Senai, Skudai, Bandar Baru Uda, Kota Tinggi, Gelang Patah and Pasir Gudang in Johore; and
- (c) Bayan Baru and Permatang Pauh in Penang.³²

The existence of these new towns had encouraged the developments of housing around the major cities in the country. The Federal Government’s administrative centre was relocated to Putrajaya, and the technology-based centre of Cyberjaya was developed outside the city centre of Kuala Lumpur. The private sector has also taken part in the urbanisation progression by constructing many residential properties in different areas. All these developments had a great impact on the progress of housing in Malaysia.

³¹Rondinelli, D.A., “Policies for Balanced Urban Development in Asia: Concept and Reality”, (1990) 11 *Regional Development Dialogue*, pp. 23-51.

³² Mohd Razali Agus, *op. cit.*, p. 3.

On the other hand, with the growing number of the population and the increasing rate of urbanisation in Malaysia, the housing needs by the public are also on the rise. The government must not only provide enough housing for the people, but the housing must also be adequate to cater for the specific housing needs for each income group. The housing needs in Malaysia are discussed as follows.

IV. THE CURRENT HOUSING NEEDS IN MALAYSIA

The housing supply must be consistent with the population growth to ensure adequate housing. The housing needs in Malaysia are on the rise due to the growing number of population. Several censuses had been carried out by the government to determine the population growth in Malaysia, as discussed below.

A. *The Population Growth and the Current Housing Supply in Malaysia*

Malaysia has carried out four national censuses to date; in 1970, in 1980, in 1991 and 2000. The Population and Housing Census 2000 (hereinafter referred to as “the 2000 Census”) was carried out from the 5 July 2000 to 20 July 2000. During this survey, the total population of Malaysia was around 23.27 million people, compared to the present number which is approximately 28.31 million people.³³ The population growth continued to rise, where the annual growth rate during the 1991 to 2000 period was recorded at 2.60 per cent. The same growth rate of 2.60 per cent was also previously recorded between 1980 and 1991. Selangor had the highest growth rate of 6.10 per cent per annum for the period of 1991 to 2000, also being the most populous state in Malaysia with 4.19

³³Malaysia, Department of Statistics Malaysia, *Population*, 31 July 2009 http://www.statistics.gov.my/eng/index.php?option=com_content&view=article&id=50:population&catid=38:kaystats&Itemid=11, last date of access 4 October 2009.

million people living in the State which accounts for 18 per cent of Malaysia's population.

The Residential Property Stock Report for the First Quarter 2009 (Q1 2009) revealed that the existing supply of residential units in Malaysia up to that period was 4,230,328 units.³⁴ Selangor has the most number of residential units with 1,214,015 units, followed by Johor with 651,025 units. From the same report, it can be seen that the residential type with highest number of units in Malaysia was the 2-3 storey terraced house with 892,483 units of existing supply, followed closely by single storey terraced with 806,506 units. The 2-3 storey terraced houses were also the most popular type of housing in Selangor with 370,047 units of existing supply, while the most popular type of housing in Kuala Lumpur was condominium or apartment with 181,293 units of existing supply. The preference for condominium developments is probably due to the scarcity of land in Kuala Lumpur.

Despite the huge number of housing supply, more housing will be required in the future as evidenced by the population growth in Malaysia. The estimation of housing needs is reflected in the Ninth Malaysia Plan, covering a period from 2006 to 2010.

³⁴ Valuation and Property Services Department of the Ministry of Finance, <http://www.jp-ph.gov.my/V1/pdf/q109residential.pdf>, last date of access 22 June 2007.

B. *Housing Requirement and Housing Price*

The rising number of population and the steady growth of urbanisation in Malaysia, especially in the developed area, show that more houses are needed to cater for this growth. By year 2020, it is estimated that Kuala Lumpur needs 626,315 housing to cater for the projected 2.2 million people living there.³⁵

The need for housing in all States is reflected in the Ninth Malaysia Plan as demonstrated by Table 3.2.

³⁵ Kuala Lumpur City Council, "Kuala Lumpur Structure Plan 2020: Housing", <http://www.dbkl.gov.my/pskl2020/english/housing/index.htm>, last date of access 8 June 2009.

Table 3.2 : Housing Requirements by State, 2006-2010

State	New Requirements	Replacements	Total Needs
Johore	86,100	5,400	91,500
Kedah	51,800	5,000	56,800
Kelantan	40,600	5,600	46,200
Malacca	19,100	1,700	20,800
Negeri Sembilan	23,000	3,700	26,700
Pahang	41,100	3,300	44,400
Perak	48,600	9,600	58,200
Perlis	6,100	500	6,600
Penang	30,900	1,900	32,800
Sabah	50,800	5,300	56,100
Sarawak	62,400	4,600	67,000
Selangor	135,200	800	136,000
Terengganu	30,000	2,800	32,800
Federal Territory of Kuala Lumpur	31,800	600	32,400
Federal Territory of Labuan	1,000	100	1,100
Total	658,500	50,900	709,400
(%)	92.8	7.2	100.0

Source: *The Economic Planning Unit, Prime Minister's Department, the Ninth Malaysia Plan, p. 445.*

It can be observed from Table 3.2 that there is a need for 709,400 units of housing by year 2010. In order to meet the demands of housing in Malaysia, the government had set a target to match the housing requirements of States according to housing price group as shown in Table 3.3.

Table 3.3: Public and Private Sector Housing Targets, 2006 – 2010

Programme	Number of units					Total	
	Housing for the poor	Low-Cost	Low Medium-Cost	Medium-Cost	High-Cost	Number of units	% of Total
Public Sector	20,000	85,000	37,005	27,100	28,700	197,805	27.9
Low-Cost Housing	-	67,000	-	-	-	67,000	9.5
Housing for the hardcore poor (PPRT)	20,000	-	-	-	-	20,000	2.8
Housing by Commercial Agencies	-	13,500	31,005	8,200	4,700	57,405	8.1
Housing by Land Schemes	-	4,500	500	-	-	5,000	0.7
Institutional Quarters Staff Accommodation	-	-	5,500	18,900	24,000	48,400	6.8
Private Sector	-	80,400	48,500	183,600	199,095	511,595	72.1
Private Developers	-	77,700	42,400	178,000	194,495	492,595	69.4
Cooperative Societies	-	2,700	6,100	5,600	4,600	19,000	2.7
Total	20,000	165,400	85,505	210,700	227,795	709,400	100.0
%	2.8	23.3	12.1	29.7	32.1	100.0	

Source: The Economic Planning Unit, Prime Minister's Department, the Ninth Malaysia Plan, p. 446.

Table 3.3 reflects that the main housing target in the Ninth Malaysia Plan is high cost housing, mainly to be offered by the private developers. The public sector housing programme in the Ninth Malaysia is focusing on providing quality and affordable housing especially for the low and low-middle income groups.³⁶ A housing programme known as “Program Perumahan Rakyat” or the Public Housing Scheme in the Ninth Malaysia Plan, is a continuance from the Eight Malaysia Plan. The scheme was implemented to combat the problem of squatters by relocating them from State land and providing them with affordable housing.

³⁶ The Economic Planning Unit, Prime Minister's Department, Mid-Term Review of the Ninth Malaysia Plan 2006-2010, p. 79, <http://www.epu.gov.my/mtr-rm9/html/english.htm>, last date of access 8 June 2009.

Private developers are encouraged to build more low-cost housing in line with the effort of the government to increase the supply of housing for the poor. One of the steps taken to encourage the private sector to actively participate in providing low-cost housing is to give them an option of either implementing the construction of 30 per cent of low-cost houses or allowing Syarikat Perumahan Negara Berhad to undertake its construction.³⁷ However, the government would consider reviewing the requirement of 30 per cent quota in low-cost housing for developers, especially in areas where the demand for such housing is low. This reaction was probably due to objections by the developers as they complained that their sale of low-cost housing estate was poor.³⁸ Nevertheless, there was a concern that the reduction might affect the supply of low cost housing as this type of housing is also vulnerable to the problem of delayed or abandoned housing. In the end, the people in the low income groups have to suffer because of inadequate housing.³⁹

Nevertheless, in line with the housing target in Table 3.3, various developers were given development approvals to build a total of 130,464 units of houses in 2006. Most private developments focused on the construction of houses in the medium or high cost groups as stipulated in the Ninth Malaysia Plan. The total number of housing units approved for development is reflected in Table 3.4.

³⁷ Deputy Minister of Ministry of Housing and Local Government, "Problem Faced by the Real Estate Industry and Solutions", *14th National Real Estate Convention*, Kuala Lumpur, 24 March 2003.

³⁸ Ng, Angie, "Dilemma in low-cost housing", *The Star*, 11 April 2009.

³⁹ Hariati Azizan and Bedi, Rashvinjeet S., "No Home Sweet Home", *The Star*, 7 June 2009.

Table 3.4: Total of Housing Units by Licensed Developers Approved for Development According to States and Category of Price, 2006

Housing category State	Low-cost (RM42,000 or less)	Medium low-cost (RM42,001 - RM70,000)	Medium cost (RM70,001 - RM100,000)	High cost (More than RM100,000)	Total
Johore	1,195	3,527	1,689	12,994	19,405
Kedah	1,184	109	2,954	10,106	14,353
Kelantan	355	39	1,166	1,614	3,174
Malacca	952	673	2,155	4,728	8,508
Negeri Sembilan	266	0	932	5,074	6,272
Pahang	387	368	1,741	2,769	5,265
Perak	1,092	568	4,024	4,152	9,836
Perlis	0	30	79	920	1,029
Penang	3,402	620	1,652	7,072	12,746
Selangor	3,717	2,332	10,593	19,594	36,236
Terengganu	462	91	1,148	1,176	2,877
Federal Territory of Kuala Lumpur	1,960	0	1,723	7,080	10,763
TOTAL	14,972	8,357	29,856	77,279	130,464

Source: Ministry of Housing and Local Government, "Statistik Bahagian Pelesenan dan Khidmat Nasihat",
<http://www.kpkt.gov.my/kpkt/main.php?Content=sections&SectionID=139>, last date of access 4 June 2009.

Majority of the approved developments in Table 3.4 were for high cost houses, which was foreseeable in line with the Ninth Malaysia Plan. The demand for high cost housing had been encouraging and high cost housing had also generated the highest value of residential property transactions by the end of 2008, with approximately RM36 million

out of the total amount of residential property transactions of RM41 million.⁴⁰ In 2008, the most popular price range for residential properties in Malaysia was between RM100,101 and RM150,000,⁴¹ which was at the lower end of the high cost property price range. It shows that despite being classified as high cost housing, most people still prefer to buy houses which were slightly above RM100,000. This was despite the per capita income of Malaysian was RM25,274 in 2008, which translates to approximately RM2,106 per month.⁴²

Since this data covers properties in Peninsular Malaysia, the general price of the properties were also influenced their location. For example, a “2-3 storey terraced house” in Perlis would generally cost less than the same type of house in Shah Alam. As most gated communities are built in the State of Selangor and Kuala Lumpur, particularly in the Klang Valley, it is necessary to examine the common price of residential properties in Selangor and Kuala Lumpur. Based on the existing stock of residential properties until the first quarter of 2009, the most popular housing type in Selangor was the “2-3 storey terraced” house, and in Kuala Lumpur, the highest supply of housing was the “condominium or apartment”.⁴³ The average price range of residential properties in Selangor and Kuala Lumpur is shown in Table 3.5.

⁴⁰ Valuation and Property Services Department website, “Data Jualan Harta Tanah 2008”, p. 53, <http://www.jp-ph.gov.my/V1/pdf/OVERVIEWLPH2008.pdf>, last date of access 4 June 2009.

⁴¹ *Id.*, p. 59.

⁴² The Economic Planning Unit, Department of Statistics, Malaysia, available at Valuation and Property Services Department website, <http://www.jp-ph.gov.my/V1/pdf/OVERVIEWLPH2008.pdf>, last date of access 4 June 2009.

⁴³ Valuation and Property Services Department website, “Residential Property Stock Report Q1 2009”, p. 4, <http://www.jp-ph.gov.my/V1/pdf/q109residential.pdf>, last date of access 7 June 2009.

Table 3.5: Mean Residential Property Sale Price per Unit in Kuala Lumpur and Selangor, 2008

Type of Property	Kuala Lumpur (RM)	Selangor (RM)
1-1 ½ Storey Terraced	258,359	168,040
2-3 Storey Terraced	413,160	277,050
2-2 ½ Storey Semi-Detached	1,423,750	-
2-3 Storey Semi-Detached	-	672,775
Detached	1,466,333	644,850
Low-Cost Flat	69,955	60,412
Flat	109,671	92,258
Condominium/ Apartment	395,281	172,876

Source: Valuation and Property Services Department website, "Data Jualan Harta Tanah 2008", pp. 13-14, 23-24, <http://www.jp-ph.gov.my/V1/pdf/OVERVIEWLPH2008.pdf>, last date of access 4 June 2009.

Table 3.5 indicates that most of the residential properties in Kuala Lumpur and Selangor can be classified as high-end properties. With the exception to low-cost flats in both States, only flats in Selangor⁴⁴ were priced below RM100,000. It can be seen that the price range for landed houses in Kuala Lumpur and Selangor is above RM100,000.

Based on Table 3.5, it can be suggested that landed housing are generally not affordable to those in the low income group. The Malaysia house price index is also increasing every year, where the overall increase of house price from year 2000 to year 2006 was at 17.8 per cent, with an average annual increase of 1.9 per cent.⁴⁵ Between year 2000 and

⁴⁴ Except for the district of Gombak.

⁴⁵ "The Malaysian House Price Index by House Type", <http://www.jp-ph.gov.my/V1/pdf/indeksrumah2006.pdf>, last date of access 8 June 2009.

2006, the terraced houses price index had increased to 15.8 per cent, the high-rise properties price index increased to 15.5 per cent, the detached houses price index increased to 28.3 per cent and the semi detached house price index increased to 21.4 per cent.⁴⁶ The increase of price was probably influenced by inflation, high demand from the public and the increase in construction costs. Unfortunately, in the end it is the consumers who would have to bear the burden of paying high price for a roof over their heads.

Despite the increasing rate of housing price in Malaysia, gated community housing schemes are becoming more common in the housing scene. There was a criticism that gated communities could only be afforded by those in the high income group and was considered as "elitist".⁴⁷ The Ministry of Housing and Local Government attempted to provide the data on gated community developments in their Portal eHome website,⁴⁸ albeit limited. The data is reproduced in Table 3.6.

⁴⁶ *Ibid.*

⁴⁷ Mak, K. W., "Debate continues on gated community", *The Star*, 28 August 2004.

⁴⁸ Portal eHome, Ministry of Housing and Local Government, <http://ehome.kpkt.gov.my/ehome/ehomebi/laporan/perangkaan.cfm>, last date of access 26 July 2009.

Table 3.6: List of Developments Listed as “Gated Community” in the Website of the Ministry of Housing and Local Government

State	Development	Standard Price/ Price Range (RM)
Johore	Multimax Development Sdn. Bhd	175,000 – 208,000
Penang	Villa Palma	350,000
	Taman Sutera II	82,640
	Aleela	445,986 – 971,520
Perak	Bandar Baru Tambun	650,000 – 980,000
Selangor	Bandar Bukit Puchong 2 8C – Ametis Terraces	375,000
	Taman Bukit Segar Jaya	386,000 – 408,800
	Kimcrest	448,000
	Kimcrest, Puchong Hartamas	355,000
	Puncak Widuri	1,850,000 - 2,250,000
	Taman Melawati	2,357,111 - 3,372,200
	Bandar Bukit Puchong 2	358,000
	Twin Palms	565,000
Kuala Lumpur	Mesra Terrace	1,428,800 – 1,498,000
	The Ara	2,622,234
	Sunway D Mont Kiara Sdn Bhd	7,132,501
	I-Zen @Villa Aseana	1,650,000

Source: The Ministry of Housing and Local Government, 2009.

Based on Table 3.6, there are 17 gated community developments in Malaysia; eight gated communities in Selangor, four in Kuala Lumpur, three in Penang, one in Johore and one in Perak, all which are either completed or still under construction. The housing

price of gated communities in Kuala Lumpur are all above RM1,000,000 while in Selangor, the housing price are above RM350,000. All the houses in the gated communities are high cost except for the development of Taman Sutera II in Penang which is a medium cost construction.⁴⁹

The number of developments of gated communities listed in the Ministry's website is not conclusive as they are a lot of existing gated developments which were not included in the website.⁵⁰ Apart from that, the development reports submitted by the developers were also not up-to-date. The data in the website is therefore incomplete. Nonetheless, the data in Table 3.6 reveals that majority of the properties in gated communities can be classified as high cost housing. It is therefore foreseeable for the public to assert that gated community housing schemes could only be afforded by those in the high income group.

The approval for housing developments in Malaysia, including developments of gated communities is obtained through the local authorities, which are under the responsibility of the Ministry of Housing and Local Government. The local authority has the power to approve or reject a development application, including an application for development of gated community in their respective locality. Therefore, it is crucial to study the role of the local authority as the planning authority in Malaysia, particularly in matters relating to housing developments. Since gated communities are gaining more popularity in the housing market, it is also pertinent to study the approach adopted by the Ministry and the local authorities towards the developments of gated communities.

⁴⁹ The development consists of four houses and none of the unit has been sold as of December 2006.

⁵⁰ The list of gated communities as compiled by the writer can be seen in Chapter Two of the dissertation.

V. THE ROLE OF LOCAL AUTHORITIES IN RELATION TO PLANNING MATTERS

Local authority is defined as “any City Council, Municipal Council or District Council, as the case may be, and in relation to the Federal Territory means the Commissioner of the City of Kuala Lumpur appointed under section 3 of the Federal Capital Act 1960.”⁵¹ According to section 3 of the Local Government Act 1976 (hereinafter referred to as “the LGA”),⁵² after consultation with the Minister and the Secretary of the Election Commission, the State Authority may declare any area to be a local authority area, assign a name to it, determine whether it is of municipal or district status and define the boundaries. The State Authority also has the power to merge two or more local authorities into one after consulting the Minister and Secretary of the Election Commission.⁵³

Currently, there are 104 local authorities in Peninsular Malaysia.⁵⁴ Johore and Perak have the most number of local authorities, with the total of 16 local authorities in each State. Perlis only has one local authority as it is the smallest State in Malaysia.

As the rate of urbanisation in Malaysia is increasing every year, it is pertinent for the local authorities to work towards achieving sustainable development especially in the urban areas. The writer will discuss the steps taken by the local authorities to achieve sustainable development by the adoption of Local Agenda 21. The writer will then proceed to explore the role of the local authorities in Malaysia as the planning authority and explain the relevant procedures for planning permission and the pre-computation plan approval. As the closure of open space in gated communities is questioned by the

⁵¹ Section 2, LGA.

⁵² Act 171.

⁵³ Section 5, LGA.

⁵⁴ Department of Town and Country Planning, “Senarai Pihak Berkuasa Tempatan di Semenanjung Malaysia”, <http://www.townplan.gov.my/risalah/013.pdf>, last date of access 3 November 2009.

public, the writer will examine the planning standards for open space and recreation in Malaysia.

A. *Sustainable Development through Local Agenda 21*

The emphasis on sustainable development in Malaysia is in line with the Local Agenda 21 programme as agreed upon at the United Nations Conference on Environment and Development in Rio de Janeiro in 1992. Local Agenda 21 is a comprehensive plan of action to be taken at all stages, from the international platforms to the local authorities. Sustainable development can be delineated as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”,⁵⁵ and was given emphasis in the Habitat Agenda.

Agenda 21 calls for involvement of local authorities’ initiative to support Agenda by working together with local communities to achieve a consensus. In Malaysia, the Ministry of Housing and Local Government is responsible for its implementation. The implementation of Local Agenda 21 in Malaysia is done through partnerships between local authorities such as District Councils, Municipal Councils, City Council and City Hall, and the communities they serve,⁵⁶ with the hope that together the parties involved would be able to identify and analyse the local development issues with regards to sustainability, to formulate action plans and later to implement the plans to achieve sustainable development. The programme addresses issues such as economic, social and ecological issues and needs, as well as monitoring frameworks and progress. So far, the Ministry of Housing and Local Government has implemented a pilot project of Local

⁵⁵ Brundtland Commission, “Report of the World Commission on Environment and Development: Our Common Future”, GA Res A/Res/42/187, 96th plen mtg, UN Doc A/42/427 (1987). Also available at <http://www.un-documents.net/ocf-02.htm#I>, last date of access 8 June 2009.

⁵⁶ Ministry of Housing and Local Government, “Local Agenda 21 Pilot Project”, <http://www.kpkt.gov.my/jkt/la21/eng/index.asp>, last date of access 8 June 2009.

Agenda 21 with four local authorities, namely the Petaling Jaya City Council, Miri City Council, Kerian District Council and Kuantan Municipal Council.

In order to be able to achieve sustainable development, the crucial step is to ensure that any new development will not jeopardise the sustainability of the area for the future generation. Therefore, future developments in the area under the jurisdiction of the local authority must be properly monitored and planned. For that reason, the Town Planning Department in each local authority plays an important role to achieve that objective.

B. *Local Authority as the Planning Authority*

A local authority is the planning authority for the area of the local authority.⁵⁷ In matters relating to town planning, the local authorities are guided by the Town and Country Planning Act 1976 and the guidelines provided by the Department of Town and Country Planning of Malaysia. The Department of Town and Country Planning of Malaysia, Peninsular Malaysia is a department established under the Ministry of Housing and Local Government and is responsible to advise on planning policies to all ministries, government and semi-government departments. Each State in Peninsular Malaysia has their own Department of Town and Country Planning that is responsible to advise the State government and the local authorities, as well as to control the developments in each State.

Under each local authority, a unit commonly referred to as the Town Planning Department⁵⁸ is established to administer the planning process of the locality. The

⁵⁷ Section 5(1), TCPA.

⁵⁸ Depending on the respective local authority, the department is also known by other names such as the Town and Country Planning Department, the Planning Department, the Planning and Development Department.

planning of town⁵⁹ is a task which is in the Concurrent List in the Ninth Schedule of the Federal Constitution, but the general planning policy is under the responsibility of the State Authority.⁶⁰ The Town Planning Department is responsible to regulate, control and plan, the development and use all of lands and buildings its area.⁶¹

Under s. 7(1) of the TCPA, the State Director⁶² is responsible for instituting a survey on the State and inspecting matters which may affect a development. The matters to be reviewed by the State Director in s. 7(1) are listed in s. 7(3) of the TCPA, which include matters regarding the social characteristic of the State, its population and the traffic situation of the State. Following the survey, the State Director must submit a report on his survey and a draft structure plan to the State.⁶³

A structure plan is a written statement which contains the formulation of the policies and proposals for the State on the measures for improvement in the areas, such as improvement of the physicality of the natural environment, to enhance the traffic management, to upgrade the social-economic and encourage urbanisation and to develop a sustainable environment for all.⁶⁴ The structure plan is subject to review every five years or earlier under s. 11(1) and (2) of the TCPA. An example of a structure plan is the Kuala Lumpur Structure Plan (PSKL).

After the structure plan has come into effect, the local authority must prepare a draft local plan for the area. A local plan formulates the proposals for, *inter alia*, the developments, land usage, traffic management and provision for open space in the local

⁵⁹ Except in the federal capital.

⁶⁰ Section 3, TCPA.

⁶¹ Section 6(1)(a), TCPA.

⁶² Section 2(1) of the TCPA defines "State Director" as in relation to a State, the Director of Town and Country Planning Department of that State.

⁶³ Section 8(2), TCPA.

⁶⁴ Section 8(3), TCPA.

area in detail.⁶⁵ The local planning authority is then required to publish the draft local plans in at least two local newspapers so that the public can inspect them and make objections where necessary⁶⁶ before it can be approved by the State Planning Committee⁶⁷ under s. 15 of the TCPA.

In order for the local authorities to implement planning strategies in the area, they need to control the developments in their localities.⁶⁸ Before any development can be carried out, the person or company concerned needs to get a planning permission from the local planning authority⁶⁹ and submit the application together with a development proposal report.⁷⁰ A housing developer therefore cannot commence a housing development without obtaining the planning permission from the relevant local authority. Pursuant to obtaining the planning permission, the developer would have to submit a pre-computation plan to the local authorities.

C. *Application for Planning Permission*

Section 2(1) of the TCPA defines planning permission as "permission granted, with or without condition, to carry put development". An applicant needs to submit an application for a planning permission to the local authority before commencing any development work⁷¹ in addition to a development proposal report as required by

⁶⁵ Section 12(3), TCPA.

⁶⁶ Section 13(2), TCPA.

⁶⁷ The members of the State Planning Committee are stated in s. 4(1), TCPA, which includes the Menteri Besar of Chief Minister of the State as the Chairman, a member of the State Executive Council appointed by the State Authority as the Deputy Chairman and the State Director of Lands and Mines.

⁶⁸ Under s. 2 of the same Act, "development" is defined as "the carrying out of any building, engineering, mining, industrial, or other similar operation in, over, or under land, the making of any material change in the use of any land or building or any part thereof, of the subdivision or amalgamation of lands; and 'develop' shall be construed accordingly."

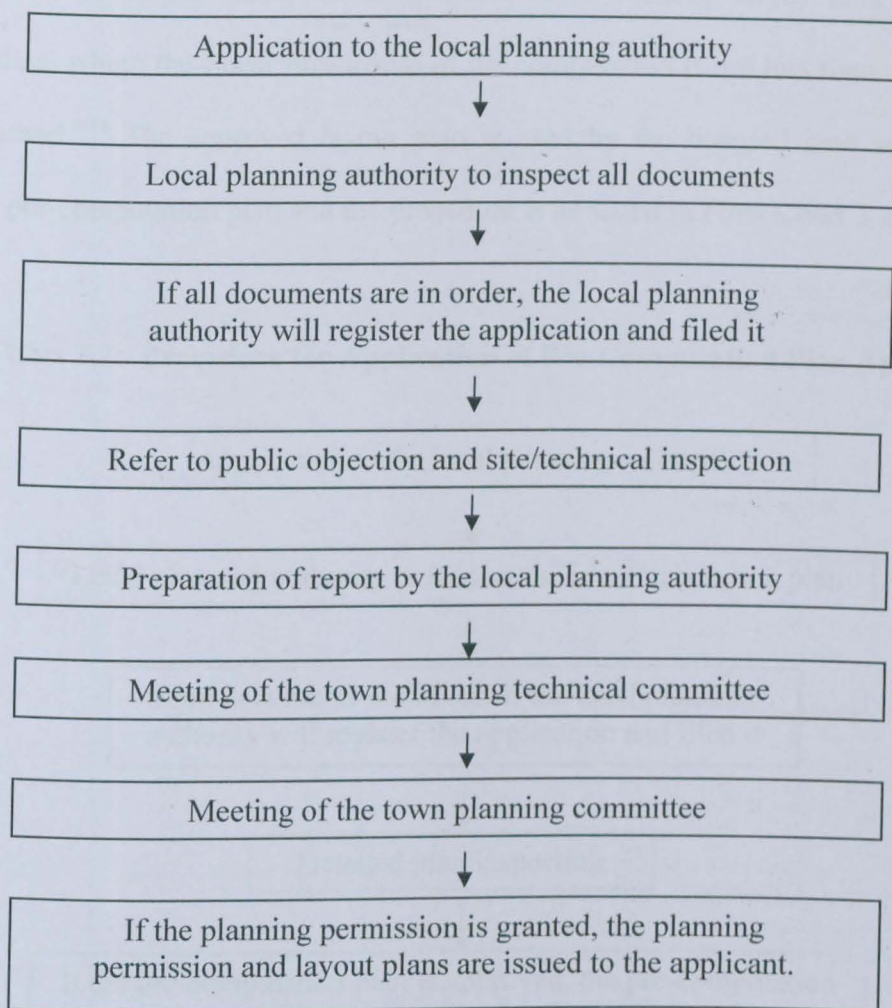
⁶⁹ Section 19(1), TCPA.

⁷⁰ Section 21A, TCPA.

⁷¹ Section 21(1), TCPA.

s. 21A(1) of the TCPA, including a layout plan.⁷² The procedure of obtaining a planning permission can be seen from Flow Chart 3.1 below.

Flow Chart 3.1: Procedure for Application of Planning Permission



If all the documentations are in order and the planning permission is obtained, the licensed land surveyor⁷³ needs to prepare a pre-computation plan and submit it to the local authority for approval.

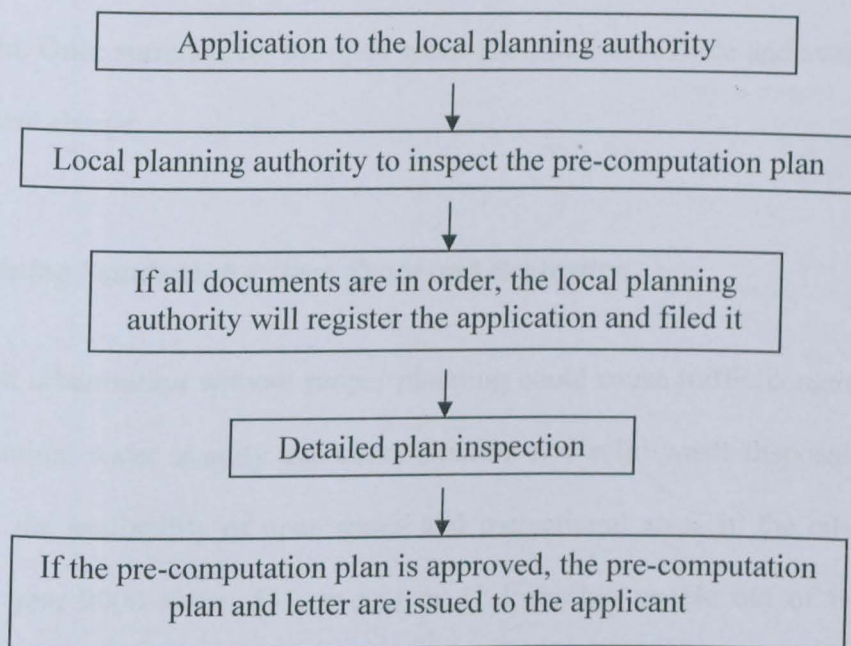
⁷² The approved planning permission will lapse after twelve months of the date of grant under s. 24(1), TCPA and the person or developer has to apply for extension from the local planning authority s. 24(3) and (4), TCPA.

⁷³ A person whose name has been placed upon the Register and to whom a license to practice has been issued by the Land Surveyors Board, is as in s. 2 of the Licensed Land Surveyors Act 1958 (Revised 1991) (Act 458).

D. *Application for Approval of Pre-Computation Plan*

A pre-computation plan is “a plan of the layout of lots prepared by Director of Survey and Mapping or licensed land surveyor showing the intended new boundaries and areas of those lots which are based on computation from existing survey data and other relevant data, where the linear misclosure of the computation is not less than one part in four thousand.”⁷⁴ The approved layout plan is used by the licensed land surveyor to prepare a pre-computation plan and the procedure is as stated in Flow Chart 3.2.

Flow Chart 3.2: Procedure for Application of Pre-Computation Plan Approval



The pre-computation plan is vital in the application for sub-division of land in s. 137(1), and for application for surrender and re-alienation in s. 204D of the National Land Code 1965. This is in keeping with the circular from the Director General of Survey and Mapping of Malaysia enforced since 23 February 1993.⁷⁵ The pre-computation plan must

⁷⁴ Section 5 of the National Land Code 1965 and Circular by the Director General of Survey and Mapping, No. 3 Year 2008 [JUPEM 18/7/2.146(11)].

⁷⁵ Circular from Director General of Survey and Mapping, No. 2/1993 : Pelan Pra-Hitungan (Pre-Computation Plan).

be approved by the local planning authority first before the Land Office can accept and process it.

The pre-computation plan is also significant as it specifies the open space available in a housing development.⁷⁶ According to the Planning Standard for Open Space and Recreation⁷⁷ issued by the Department of Town and Country Planning of Peninsular Malaysia, open space and recreational facilities shall be taken into consideration in the preparation of Development Plans, for example, the Structure, Local, District Development and Rural Growth Centre Plans.⁷⁸ This open space is to be surrendered to the State Authority and would not be re-alienated to the developer, in the case of housing development. Once surrendered, the open space should be accessible and available to the public without charge.

E. *Planning Standards for Open Space and Recreation*

Uncontrolled urbanisation without proper planning could cause traffic congestion, noise and air pollution, water scarcity and contamination and solid waste disposal problems. As a result, the availability of open space and recreational areas in the city might be affected. In year 2000 alone, 55 per cent or 12.1 million people out of the nation's population of 22 million people, resided in urban territories. In year 2020, it is projected that 7 million people will live in the Klang Valley,⁷⁹ with 2.2 million people living in Kuala Lumpur alone.⁸⁰ A total space of 1388 hectares are needed for open space

⁷⁶ In practice, the open space area in the computation is marked with red ink.

⁷⁷ Town and Country Planning Department, *Planning Standards: Open Space and Recreation*, JPBD Planning Standards 21/97 and *Garis Panduan dan Piawaian Perancangan*, JPBD Planning Standards 7/2000.

⁷⁸ Guideline 3.0 (ii) of the JPBD 21/97.

⁷⁹ Kamalruddin, S., "Sustainable Land Use Development in the Klang Valley: An Elusive Dream?", *Malaysian Town Plan*, Issue 1, Volume 1, September 2005.

⁸⁰ Kuala Lumpur City Council, "Kuala Lumpur Structure Plan 2020: Economic Base and Population",

developments, including for district parks, neighbourhood parks, local parks, local play areas and sports complexes.⁸¹

The Department of Town and Country Planning of Peninsular Malaysia and of each State are responsible in assisting the State and local authorities in matter relating to open space and recreation for all types of developments.⁸² The proper allocation of open space in a housing development is at least ten per cent of the gross area of the development site.⁸³

The developer must also ensure that before the open space is surrendered to the State Authority, the area is cleaned, levelled and equipped with proper drainage system and access road, as well as planted with grass.⁸⁴

Apart from that, the type of recreational activity on the open space site is to be provided based on the population in the area. For example, an area with a population between 300 and 1,000 people requires the developer to provide for a playing lot between the size of 0.5 and 1.5 acres, while an area with a population between 1,000 and 3,000 requires the developer to provide the people with a playground between the size of 1.5 and 5.0 acres.

The scarcity of urban land has resulted in lack of recreational open spaces. A study⁸⁵ conducted in Shah Alam neighbourhoods in Selangor found that except in Section 4, other 13 Sections in Shah Alam did not meet the standard open space area required for

http://www.dbkl.gov.my/pskl2020/english/economic_base_and_population/index.htm, last date of access 8 June 2009.

⁸¹ Kuala Lumpur City Council, "Kuala Lumpur Structure Plan 2020: Community Facilities", http://www.dbkl.gov.my/pskl2020/english/community_facilities/index.htm, last date of access 8 June 2009.

⁸² Guideline 1.0 of JPBD 7/2000.

⁸³ Guideline 3.0(i) and figure 3.0 of JPBD 21/97.

⁸⁴ Guideline 3.0(iv) and figure 3.0 of JPBD 21/97.

⁸⁵ Habsah Hashim, "Harmonious Community Living in Urban Neighbourhoods: a Case of Central Shah Alam", *Eighth International Conference of the Asian Planning Schools Association*, Penang, 11-14 September 2005.

there was inadequate open space there.⁸⁶ As the number of gated communities increases, there is a concern that gated communities might deny the public from enjoying the open space inside the residential area.

Various gated communities have been developed before the Strata Titles Act 1985 (hereinafter referred as the "STA") was amended in 2007. As such, most were developed as conventional housing and thus having to conform to the requirement of surrendering the open space area to the State Authority.⁸⁷ The open space and the recreational facilities in the area were therefore public place and should be accessible to the public. In addition to the existing gated community developments, many residential areas which were not initially gated have chosen to enclose themselves by installing boom gate, employing security guards and restricting non-residents from having access to the area. As a result, the public were denied from utilising the open space in the neighbourhood. The response of the local authorities towards the act of gating residential areas by the residents is examined in Part VI.

VI. LOCAL AUTHORITIES' REACTION TOWARDS GATED COMMUNITY HOUSING DEVELOPMENTS

In 2004, the former Minister of Housing and Local Government, Datuk Seri Ong Ka Ting acknowledged the fact that gated community developments were gaining momentum and appeared to support the growth of such housing.⁸⁸ He also recognised the freedom of the populace to team up and turn their neighbourhood into gated community,

⁸⁶ 4.2 acres per 1000 population or 1.69 hectares per 1000 population.

⁸⁷ This issue is discussed in Chapter 4 of the dissertation.

⁸⁸ Datuk Seri Ong Ka Ting, speech delivered during the official launch of Duta Tropika, 18 December 2004. Available at <http://aplikasi.kpkt.gov.my/ucapan.nsf/521fb206a8dbd0a34825697400224def/9dcd19d05c62b22748256fd0033fcbe?OpenDocument>, last date of access 8 June 2009.

including in situations where the neighbourhoods were not initially gated in the first place.⁸⁹ The Selangor State Government⁹⁰ and the former Women, Family and Community Development Ministry Parliamentary Secretary⁹¹ were also reported to support gated communities through their statements.

However, Datuk Seri Ong Ka Ting also agreed that a study needs to be done to ascertain the social impact of gated communities as some citizens were concerned that gated communities might be a form of apartheid.⁹² This concern was also shared by the President of National Geography Association of Malaysia, Professor Morshidi Sirat, who considered gated communities as a “disturbing feature in the urban landscape from the point of view of social and physical planning”.⁹³ Despite the then absence of law to legalise gated communities, more gated communities were being built by the developers each day.

Initially, local authorities generally did not allow such developments. As more applications for gated community housing developments were received, the local authorities took a more flexible approach towards such developments. Some local authorities allowed for such housing projects if the developments corresponded with the guidelines outlined by the respective local authorities.⁹⁴

⁸⁹ “Concern over gated housing projects: So-called social apartheid to be studied”, *The Star*, 20 August 2004.

⁹⁰ Statement by Datuk Seri Dr. Mohamad Khir Toyo, “Local council enforcers on bikes to help fight crime”, *The Star*, 20 January 2008.

⁹¹ A personal statement by Datin Paduka Chew Mei Mei. Stuart Michael, “Chew is all for gated communities”, *The Star*, 26 September 2006.

⁹² “Concern over gated housing projects: So-called social apartheid to be studied”, *The Star*, 20 August 2004.

⁹³ Morshidi Sirat, “Study needed to understand gated trend”, *The Star*, 23 August 2004.

⁹⁴ Subsequently, the local authorities also received applications to convert existing conventional neighbourhoods into guarded communities from the residents, resulting in the local authorities to prepare another set of guidelines. Guarded community was defined by the Selangor Housing and Real Property Board as “an enclave that is provided with security services with or without a guard house and has no physical barriers”. The discussion in this Chapter only concerns gated communities.

After the 2007 amendments to the STA which legalised gated communities in Peninsular Malaysia, the State of Selangor issued a set of standard guidelines to be used in the State of Selangor. The following discussion examines the position taken by the local authorities before and after 2007 amendments to the STA, particularly in the State of Selangor and Kuala Lumpur since the majority of gated community developments take place in Selangor and Kuala Lumpur.

A. *Position Taken by the Local Authorities before Amendments to the Strata Titles Act 1985 by Act A1290, with No Uniform Guidelines*

Before amendments were made to the Strata Titles Act 1985 in 2007, the Town Planning Department in each local authority made decision on whether to approve gated projects or not on *ad hoc* basis as there was no policy or guideline available for the local authorities to follow.

The approach taken by each local authority was inconsistent. While some local authorities approved gated community applications with conditions, others would reject such application. Petaling Jaya City Council (hereinafter referred to as "MBPJ"), for example, had not given any approval for gated community projects prior to the STA amendments.⁹⁵ Despite this, several gated communities were built in Petaling Jaya, for example the Tropicana Golf and Country Resort located in Damansara.⁹⁶ The developer claimed that since no strata title could be issued to the houses in Tropicana Golf and Country Resort at the time of application, they had asked for approval from Petaling

⁹⁵ Interview with Mr. Ashidi bin Tarmizi, Assistant Planning Officer, Petaling Jaya City Council on 16 December 2005.

⁹⁶ From the classified sections in The Star on 5 February 2006, semi-detached houses there cost approximately from RM950,802 to RM1.87 millions, and a bungalow was offered at a price tag of RM3.9 millions.

District Office.⁹⁷ Some other local authorities such as Selayang Municipal Council⁹⁸ and Subang Jaya Municipal Council⁹⁹ had allowed gated community developments in their localities but the numbers of approvals given were very limited and were in fact discouraged subsequently.

Local authorities such as Kuala Lumpur City Council (hereinafter referred to as “DBKL”), Johor Bahru Tengah Municipal Council (hereinafter referred to as “MPJBT”), Selayang Municipal Council (hereinafter referred to as “MPS”) and Kajang Municipal Council (hereinafter referred to as “MPKj”) issued their own guidelines to regulate the applications for gated community from the developer or residents. The guidelines are as elaborated below.

(1) *Guidelines by Kuala Lumpur City Council*

DBKL allowed developments of gated communities subject to several conditions.¹⁰⁰ It must also be noted that after amendments were made to the STA in 2007, DBKL still maintains the same guidelines for applications of gated communities.

The conditions imposed on gated community application are:

- (a) the application can only be made by the developer of the gated community;
- (b) the purchasers must be made aware of the terms and conditions attached to the concept of gated community, especially matters involving the maintenance costs

⁹⁷ Tan, Karr Wei, “Tropicana folks want to know status of township”, *The Star*, 25 April 2008. Initially the maintenance was to be carried out by the developer. However, the Tropicana Residents’ Association later requested for the maintenance to be handed over to the local authority. The local authority refused this handover as Tropicana was a gated community.

⁹⁸ Interview with Mr. Sheikh Mohd Fuaddilkhatushee bin Mohamad Ilham, Town Planning and Development Department, Selayang Municipal Council on 19 December 2005.

⁹⁹ Interview with Miss Zanariah bt Khalid, Planning Technician, Subang Jaya Municipal Council on 21 December 2005.

¹⁰⁰ Mahadi bin Che Ngah, “Garis Panduan Perancangan ke atas Pembangunan ‘Gated Community’: Pengalaman DBKL”, *Seminar Gated Community*, Johor Bahru, 20-21 July 2005.

of the roads, drainage, street lights and walk paths, and the terms must be stated in the sale and purchase agreement between the developers and the purchasers;

- (c) the application is strictly for residential development only;
- (d) only a guardhouse, with no barrier, is allowed to be built, and its location must not cause any obstruction to the traffic movement; and
- (e) the size of the guardhouse should not be more than six feet by eight feet (6'x8').

If these conditions for the new development of gated community were met, DBKL and the developer could enter into an agreement regarding, *inter alia*, road maintenance and garbage collection. Such agreements were made with the developers of some gated community developments in Sri Hartamas, Kepong and Bukit Tunku.¹⁰¹ Section 36(1) of the LGA allows a local authority to "enter into any contracts necessary for the discharge of any of its functions provided that such contracts do not involve any expenditure in that year in excess of the sums provided in the approved annual estimates for the discharge of such functions unless such expenditures in that year is authorised under s. 56." Section 39(a) of the same Act states that "the revenue of local authority shall consist of all taxes, rates, rents, license fees, dues and other sums or charges payable to the local authority by virtue of the provisions of this Act or any other written law". These provisions allow the local authority to enter into any agreement with other local authority or person to discharge any of its functions. At the same time, even though there were agreements signed with the developers, the local authorities are still entitled to receive income for matters as specified in s. 39(a) of the LGA.¹⁰²

¹⁰¹ Unfortunately, the names of the projects were not revealed in the report obtained by the writer.

¹⁰² Section 39, LGA states that the revenue of a local authority shall consist:

- (a) all taxes, rates, rents, licence fees, dues and other sums or charges payable to the local authority by virtue of the provisions of this Act or any other written law;
- (b) all charges or profits arising from any trade, service or undertaking carried on by the local authority under the powers vested in it;
- (c) all interest on any monies invested by the local authority and all income arising from or out of the property of the local authority, movable and immovable; and

Among the vital and relevant terms contained in the agreement between DBKL and the housing developer were:

- (a) the developer must be the registered owner of the development project;
- (b) infrastructures such as roads, walk paths, street fittings and drainage must be handed over to DBKL;
- (c) the developer who was responsible for the development of the project must have already built those infrastructures before handing them over to DBKL; and
- (d) the developer would be the party to assume responsibility for the signed agreement between them and DBKL, and if the maintenance was not properly managed, the agreement could be terminated without notice.

Such agreement was in fact beneficial to DBKL as it reduced the cost of maintaining some of the infrastructures and public amenities in the housing area. However, this shift of responsibility to maintain the facilities in gated communities must be done without compromising the assessment tax that DBKL was entitled to receive from each home owner. The writer is of the opinion that despite the contractual agreement signed between the developer and DBKL, payment of assessment tax should still be made compulsory for the residents of gated communities.

(d) all other revenue accruing to the local authority from the Government of the Federation or of any State or from any statutory body, other local authority or from any other source as grants, contributions, endowments or otherwise.

(2) *Guidelines by Johor Bahru Tengah Municipal Council*

Although there was no specific guideline for gated community housing schemes, MPJBT had issued guidelines¹⁰³ for the installation of security fences for gated communities.

Among the conditions were:¹⁰⁴

- (a) the fencing must not be constructed so as to close the roads connecting the housing area to the surrounding roads;
- (b) a gate could only be built at the main entrance road;
- (c) the gate had to be guarded around the clock by a security guard registered with a licensed security company; and
- (d) the fences could only be built at the side of the road reserve boundary and had to be see-through.

In addition to the above requirements, other requirements include that the management company engaged by the developer was required to inform MPJBT before commencing security control in the area and that the usage of telephone communication for the purpose of security control must be done through security guards.¹⁰⁵ Although the local authorities allowed for a guard house to be built in the area, the construction of the guard house was treated as a temporary structure with temporary permit, which had to be renewed every year.¹⁰⁶ MPJBT had the right to demolish the guard house if the permit was not renewed. Among the housing developments approved with the concept of gated communities were Austin Height, Taman Redang, Taman Impian Molek and Taman Setia Tropika, all located in Johor Bahru.¹⁰⁷

¹⁰³ The guideline was enforced on 1 May 2003 as approved in the Plan and Planning Committee Meeting through KKPP 77103.

¹⁰⁴ Cheong, Nai Cheong, "Gated and Guarded Community; Architect's Point of View", *Issues in Gated Community Housing Schemes*, Johor Bahru, 13 August 2005.

¹⁰⁵ *Ibid.*

¹⁰⁶ The Building Plan approval must be in accordance with the requirement for approval of a conventional housing scheme.

¹⁰⁷ *Ibid.*

(3) *Guidelines by Selayang Municipal Council*

In Selayang, gated community developments were allowed in “cul-de-sac” housing developments and the perimeter fencing must not exceed five feet.¹⁰⁸ Developers were not allowed to impose additional charge without consent from the residents and were responsible to inform the buyers regarding the requirement to pay quit rent. MPS was only responsible for garbage collection and the maintenance of road lights, and they reserved the right to enter the housing area. MPS may revoke their approval at any time. An example of a gated community development approved by MPS was Sierramas in Sungai Buloh.

(4) *Guidelines by Kajang Municipal Council*

Another local authority which had previously approved gated community applications was MPKj. Among gated community projects under the jurisdiction of MPKj were Bangi Golf Resort, Country Heights, Bukit Gita Bayu and Taman Seri Cheras Jaya.¹⁰⁹ These entire projects, save for the last one, catered for high end market. The local authorities reserved their right to enter the gated communities.

The Bangi Golf Resort was a resort and golf oriented development. The project consisted of a development of 36-holes golf field, a hotel and residential buildings which include bungalows, terrace houses and apartments.¹¹⁰ The road and public amenities have been surrendered to the local authority. Garbage collection was handled by Alam Flora, while the maintenance of roads, drainage and landscape became the responsibility of Bangi Golf Resort Sdn Bhd. The house owners had to pay for the maintenance of the area.

¹⁰⁸ Interview with Mr. Sheikh Mohd Fuaddilkarushee bin Mohamad Ilham, Town Planning and Development Department, Selayang Municipal Council on 19 December 2005.

¹⁰⁹ Nizam bin Sahari, “Konsep Pembangunan ‘Gated Community’ di Kawasan Majlis Perbandaran Kajang”, *Seminar Gated Community*, Johor Bahru, 20-21 July 2005.

¹¹⁰ *Ibid.*

Country Heights Kajang is among the most popular and considered to be one of the pioneers of the concept of gated community in Malaysia. Its development consisted of 623 bungalows and clubhouse on 450 acres of land. It was given conventional titles and the public amenities were handed over to the government for maintenance. In 1996, the Hulu Langat District Council¹¹¹ signed an agreement with Country Heights Sdn Bhd, known as the "Perjanjian Penyelenggaraan Pembersihan".¹¹² Among the contents of the agreement were:

- (a) the assessment tax collection would be divided and shared between the local council and the Country Heights Sdn Bhd on a forty-to-sixty ration (40:60); and
- (b) as a consideration, Country Heights Sdn Bhd would do the maintenance and cleaning up of the area, including collection of garbage, cleaning and maintaining the roads, drainage, grass and other public facilities.

However, the agreement was terminated in 1998 as the legality of the agreement involving the reduction in the council's revenue or income in the form of assessment tax was questionable due to its contradiction with s. 39(a) of the LGA. Other reasons for the termination were the failure on the part of the developer to maintain the road and the landscape, and lack of road connectivity to neighbouring developments. The maintenance of properties in Country Heights, Kajang is presently carried out by MPKj, while garbage collection is managed by Alam Flora. Similar to the developments of Bangi Golf Resort, Country Heights in Kajang still maintains its setup as a gated community although the maintenance of the facilities is done by the local council.

¹¹¹ Later, MPKj took over the maintenance of Country Heights from Hulu Langat District Council.

¹¹² Nizam bin Sahari, *loc. cit.*

MPKj also gave permission to Bukit Gita Bayu in Sri Kembangan to be developed as a gated community. It was built on a piece of land of 117.712 acres, and comprising bungalows, semi detached houses, apartments, condominiums, townhouses and a clubhouse.¹¹³ All the roads and public facilities were surrendered to the government, but the maintenance of roads and garbage collection were handled by Tetuan Yee Seng Heights and Alam Flora, respectively. MPKj had also approved a resort concept development inside Gita Bayu Resort which consisted of bungalows and condominiums with strata concept. The properties were maintained by a management corporation.¹¹⁴ It must be noted that this development was approved before the amendments were made to the Strata Titles Act 1985 in 2007. As such, the legality of such move is questionable since bungalows could not be granted with strata titles unless they fall within the purview of s. 6(1) of the Strata Titles Act 1985.

In 2007, the Selangor Housing and Real Property Board introduced a uniform guideline which was applicable to all local authorities. This uniform set of guidelines was introduced in order to resolve the inconsistency of approach by the local authorities in Selangor relating to developments of gated communities

B. *Introduction of a Uniform Guideline in Selangor before Amendments to the Strata Titles Act 1985 by Act A1290*

A resolution was finally passed in a seminar organised by the Selangor Housing and Real Property Board¹¹⁵ from 29 to 30 September 2005 in Port Dickson. The resolution

¹¹³ *Ibid.*

¹¹⁴ *Ibid.*

¹¹⁵ The Selangor Housing and Real Property Board was established under the Selangor Housing and Real Property Board Enactment 2001 (Enactment No. 14 of 2001), which was gazetted in Selangor Government State Gazette Volume 54 No. 26 on 20 December 2001. The functions of the Board are stated in s. 6(1) of the Enactment, which include to advise the State Authority in matters relating to housing, to simplify developments of housing and real estate and to become the source of information for the housing industry

recognised the issues and problems associated with gated community developments, including from the planning and physical aspects, lacuna in law and social impact. As a result, an action plan was formulated, and it was divided into three different categories; a Short Term Plan, a Medium Term Plan and a Long Term Plan.

The Short Term Plan was to provide a guideline as guidance for the local authorities and developers to follow. The Medium Term Plan was to amend the STA to introduce provisions for the establishment of gated communities, while the Long Term Plan was to conduct a comprehensive study on the social consequences of gated community developments, particularly on the effect of gated community developments on the residents themselves and the communities living outside the gated communities.

Pursuant to the Short Term Plan, a new guideline was issued by the Selangor Housing and Real Property Board for the local authorities in Selangor which was approved by the Selangor State Executive Council on 4 October 2006.¹¹⁶ The guidelines were similarly divided into two parts; one for “existing development” and the other “new development”. For existing development, residents of houses that had been issued with Certificate of Fitness for Occupation¹¹⁷ were allowed to apply for their neighbourhood to be a guarded community, not gated. For new developments, only the developer or land owners could apply for developments of gated community schemes.

The conditions which were laid down by the guidelines for approving gated community schemes were as follows:

- (a) application is to be made only by the land owner or developer;

in the Selangor. The list of functions of the Selangor Housing and Real Property Board can be found on their website <http://lphs.selangor.gov.my/Fungsi.html>.

¹¹⁶ Dass, Maria J., “Guidelines for gated communities”, *The Sun*, 4 December 2006.

¹¹⁷ Now CFO has been replaced with Certificate of Completion and Compliance (CCC).

- (b) application required 100 per cent approval from property owners;
- (c) the maximum area allowed for each parcel for gated community should not exceed 20 acres;
- (d) construction of a guard house without barrier was permitted and its location should not obstruct the traffic (situated at road shoulder only);
- (e) the size of the guard house should not exceed 6 feet x 8 feet or other sizes that the local authority thinks fit and suitable;
- (f) the location and design of the guard house must be shown in the plan during the Planning Approval stage;
- (g) consent from the local authority or the land administrator or the State Authority must first be obtained before the construction of the guard house on the reserved road or vacant area;
- (h) the appointed security guards must be registered with Ministry of Home Affairs or with other relevant agencies;
- (i) roads in the housing scheme were not connected with the adjoining areas at the time the application was made or in the future;
- (j) local authority and other utility companies were free to conduct their maintenance work in the area;
- (k) road reserved, street lights, drains, rivers, pavements, playground and vacant area remained as public reserved area. The developer could maintain the facilities based on the agreement entered with the local authority; and
- (l) developer could build five feet tall or fence along the border (closed) with additional two feet (open) to make it visible from outside the community area.

Other requirements for development of gated communities are as stated in Table 3.7.

Table 3.7: Requirements for the Development Scheme Standard for Application of New Gated Community Prior to the Amendments to the Strata Titles Act 1985 by Act A1290

Requirement	Details
Building setback	To follow development standard determined by the local authority
Road hierarchy	To follow the standard determined by the local authority, with minimum of 50 feet reserved road
Development of terrace house	<ul style="list-style-type: none"> • Front road: Minimum 50 feet • Side lane: 20 feet • Back lane: Ten feet
Road entrance to each block parcel	<ul style="list-style-type: none"> • Width of reserved road : 66 feet • Setback for guard house from public road is more than 66 feet • Visitor's parking (in the parcel area) • Local road – 50 feet: <ul style="list-style-type: none"> ➤ 40 feet : including road, landscape and “walk area” ➤ Ten feet : services (five feet for each section)
Facilities to be provided inside the gated community area	<ul style="list-style-type: none"> • Children playground • Vacant area • Club house • Community shop
Facilities to be provided outside the gated community area	<ul style="list-style-type: none"> • Facilities provided by the government, for example schools • Community halls • Football fields • Stalls

Source: Selangor Housing and Real Estate Board, the “Guidelines for Gated and Guarded Community Schemes”, 2006.

In addition, the developers of gated communities were also to provide detailed information with regards to the concept of gated communities in the deed of mutual covenants signed between the developer and the purchasers.

All developers of gated community housing schemes need to incorporate the following details in their deed of mutual covenants:

- (a) the owner or applicant shall be fully responsible for the security and maintenance in the community area;
- (b) a copy of disclosure statement and deed of mutual covenants agreed upon between the buyers and the developer must be forwarded to the local authority for verification and advice purpose;
- (c) the local authority's approval must be obtained for any construction or alteration on road design, drainage, pavement, sign board or other types of road accessories.
- (d) the developer cannot deter the local authority from entering the community area for inspection purpose;
- (e) any application to construct a guard post or security house must first be referred to the local authority for approval;
- (f) written consent from the State Authority or the local authority must be obtained for the use of road reserved and other reserved for the said purpose;
- (g) the sewerage and drainage system of the community area should not be allowed to obstruct the sewerage and drainage system of adjoining area;
- (h) the developer is not permitted to impose any charges or payment on the public to enter the community area; and
- (i) a security bond will be imposed by the local authority on developer or owner to guarantee that maintenance work would be carried out as determined.

The developers also need to sign an agreement with the respective local authorities and the following terms need to be included in the agreement:

- (a) the developer is the registered owner of the development project as stipulated in the said agreement;

- (b) the facilities that are required upon the development approval must first be completed before being surrendered to the local authority;
- (c) facilities such as road, vacant area, street lights, drainage, pavement and landscape must be maintained as government reserved;
- (d) if the management and maintenance is not carried out properly, the agreement will be terminated without notice; and
- (e) a security bond imposed on developer or owner to guarantee that management and maintenance will be carried out properly and satisfactorily must be paid to the local authority.

The above discussed guidelines were followed by the local authorities in Selangor pending amendments to the STA to allow for gated community developments. Following the enforcement of the subsequent amendments by Act A1290, a new set of guideline was introduced by the Selangor Housing and Real Property Board for all local authorities in the State of Selangor, which is discussed below. Thus far, other States have yet to issue any similar guidelines.¹¹⁸

C. *Position Taken by the Local Authorities in Selangor after the Amendments to the Strata Titles Act 1985 by Act A1290*

One of the important implications of the amendments to the STA in 2007 is the legalisation of gated community housing schemes, as new developments of landed housing can now be issued with strata titles.¹¹⁹ Due to this, the Selangor Housing and Real Estate Board came out with another set of guideline for application of gated

¹¹⁸ As at 5 May 2009.

¹¹⁹ The amendments to the STA by Act A1290 are discussed in Chapter 4.

communities in the state of Selangor. The new guidelines took effect in December 2007.¹²⁰

Developers applying for approval of gated community projects from the local authorities in Selangor must indicate that the application is for gated community developments under the amended s. 6(1A) of the STA.¹²¹ According to the amended s. 6(1) of the STA, developers can apply to subdivide land into land parcels which can be issued with strata titles. The building on the land parcel must not exceed four storeys¹²² and other concepts applicable under the Strata Titles Act 1985 are now extended to land parcels as well. One of the outcomes of Act A1290 is that common properties in gated communities need not be surrendered to the State Authorities as they become the responsibility of the management corporation of each strata development. As such, local authorities are not responsible for maintaining the common properties and no maintenance agreement between the local authorities and the developers is necessary.

Although strata titles can be issued to land parcels in gated communities, the Selangor Housing and Real Estate Board still require the developers to adhere to a set of guideline for application of gated community developments. The new guideline is as in Table 3.8.

¹²⁰ "Selangor revises GACOS development guidelines", (February 2008), *REHDA Bulletin*, p. 1.

¹²¹ The Selangor Housing and Real Estate Board, the "Guidelines for Gated and Guarded Community Schemes".

¹²² Section 4 of the STA.

Table 3.8: Planning and Architectural Requirements for Application of New Development of Gated Community after the Amendments to the STA by Act A1290

Requirements	Details
Population density	According to the existing local authority standard.
Fencing regulation	Maximum height allowed for fence is nine feet with 33 per cent opening which is visible from outside. The opening must be at the same level around the fence.
Location of amenities	Distance between swimming pool and house is two meters.
Public amenities	<p>For one parcel in gated community housing scheme:</p> <ul style="list-style-type: none"> • the playground/ Vacant area is at ten per cent. • the multi purpose hall must has a minimum area of 2,000 square feet. <p>Development exceeding one parcel in gated community housing scheme must provide integrated public housing amenities and must be outside of gated community housing scheme.</p>
Carpark / Motorcycle park	<p>Must be marked on plan and site, for example 'parking lot for visitors'.</p> <p>Allocation of visitors' parking:</p> <ul style="list-style-type: none"> • Bungalow / Semi detached/ Cluster/ Zero lot: ten per cent for visitors. • Terrace/ Townhouse: Ten per cent for visitors. • Multi level: <ul style="list-style-type: none"> - Low costs : One house: One parking lot + ten per cent - Low medium: One house: One parking lot + ten per cent - Medium and high: One house: Two parking lot + ten per cent.
Roads	<p>Road size must be at least 50 feet</p> <ul style="list-style-type: none"> • Two way vehicle : 24 feet • Pedestrian (both ways) : Ten feet • Green lungs (both ways) : Ten feet • Drain (both ways) : Six feet
Drainage	Areas with rivers or streams in proposed plan are not allowed for gated community housing scheme.
Building Height	Maximum height allowed for bungalow/ semi detached / cluster / zero lot/ terrace/ townhouse are four stories from ground zero.

Source: Selangor Housing and Real Estate Board, "Pembangunan Skim Komuniti Berpagar (Guarded dan Gated Community) di Negeri Selangor", 2007.

The new guidelines also set a limitation on the number of housing or parcel units according to the type of house in the gated communities. The limitation on the number of units and area for gated community housing schemes development is shown in Table 3.9.

Table 3.9: Limitation of Housing Units according to Development Category after the Amendments to the STA by Act A1290

Development Category	Units	Maximum area
Bungalow/ Semi detached/ Cluster / Zero lot	24-160 units	20 acres
Terrace	240 units	Ten acres
Mixed development	240 units	Ten acres
Townhouse	480 units	Ten acres

Source: Selangor Housing and Real Estate Board, "Pembangunan Skim Komuniti Berpagar (Guarded and Gated Community) di Negeri Selangor", 2007.

The move to limit the number of units and area for a gated community was questioned by some planners as they were of the opinion that so long as the developments correspond with the planning standards and the community facilities are centrally located and surrendered, there should not be a restriction on the number of units and the size of area.¹²³ This view was in light of the requirement of community facilities to be located outside of gated communities, where the issue of sharing of facilities to encourage social interaction between the residents of gated communities and the residents of conventional communities in the area is no longer relevant. Therefore, as long as the planning standards for gated communities in Table 3.8 are fulfilled, there should not be any limitation on the number of units and the size. Based on this view, the writer is of the opinion that the move to restrict the total number of units and the area size of the gated communities might not be effective in promoting social integration of the communities who live inside and outside gated communities. This move, however, might be relevant in restricting the developers from constructing gated communities which may be considered as too large as the community facilities might be too far from the gated

¹²³ Presentation by Group One, "Definition of GACOS", *Workshop on the Gated Community Housing Schemes for the Formulation of Appropriate Legislations in Malaysia*, Shah Alam, 28-29 April 2007.

communities. Developments of gated communities which are huge in size might also have a negative impact on the traffic management in the locality.

VII. CONCLUSION

The process of evolution has brought us from living in caves to the present era where it is considered normal for individuals to spend a significant amount of money towards building dream home. Housing is a platform of life; a place where families can get together and where future generations are nurtured. Housing indeed remains as one of the important human needs in civilisation.

The right to shelter was given due recognition by the United Nations through various treaties and programmes. In the present era where the rate of urbanisation is constantly high in most countries, the governments around the globe carry the heavy task of ensuring that there is adequate housing for everyone. Notwithstanding the fact that Malaysia is not a member of the UN-Habitat and had not ratified the ICESCR, successive policies implementation by the government demonstrates their dedication to ensure adequate housing for the citizens. Eradication of poverty in Malaysia influenced the various policies implemented and the Ministry of Housing and Local Government carries the major task of providing adequate housing particularly for those in low income group. The high level of urbanisation particularly in major cities indicates the importance of housing in urban areas. The demand of housing has been consistently high especially in the more developed area in Kuala Lumpur, Selangor and Johore Bahru and it has been the main target of the public sector is to provide for housing for those in low and low-middle income group. Although the private sector is encouraged to provide for low-cost

housing, the focus of the private sector and the developers is on high end market as such housing are more in demand compared to low-cost housing.

The figures in Table 3.3 and Table 3.4 show that while there have been encouraging responses from the developers for high cost housing developments, the responses for other types of housing have been slow. It appears that the developers are keener in developing high cost houses and are not interested in building other type of housing, particularly for medium low cost housing. If the trend continues, the supply of housing for those in low and medium low income group would not be adequate.

Table 3.6 and study conducted by the writer show that properties in gated communities are high cost and could not afforded by those in low income group. Despite the high price tag, gated communities received good response from the public. The developments of gated communities, once limited to multistorey buildings and townhouses, have now been extended to terraces, semi detached and bungalow housing. By amending the Strata Titles Act 1985 in 2007 to allow for gated communities, the Malaysian government is encouraging such developments. Since developments of landed gated communities are mostly catered for high cost developments, the developments of gated communities are not beneficial for those in low income group.

As the rate of urbanisation is high, more housing is required to be built. Since the developers also play an important role to ensure that the demand for housing in Malaysia is fulfilled, they are not to be blamed for focusing their developments on high cost housing as the demand for such housing is high. Notwithstanding the steps taken by the government to ensure adequate housing for the public, it is imperative for the government to take more efforts to ensure that they are constantly on par with the new

type of housing developments introduced by the developers. The mismatch between a new concept such as gated communities and the available legislations had set off legal problems relating to such developments. The legal issues surrounding gated communities pre and post amendments to the STA in 2007 are discussed in Chapter Four of the dissertation.

CHAPTER FOUR

LEGAL ISSUES SURROUNDING GATED COMMUNITY HOUSING SCHEMES

I. INTRODUCTION

In this Chapter, the writer aims to explain the legislative provisions affecting gated communities including aspects of issuance of title and matters thereto. At the outset, it is to be noted that the establishment of gated communities was not legalised until a legislative exercise in 2007 which extended the coverage of the Strata Titles Act 1985 to gated communities on 12 April 2007. The legislative exercise in 2007 involved:

- (a) amendments to the Strata Titles Act 1985 (Act 318)¹ by Strata Titles (Amendment) Act 2007 (Act A1290);
- (b) amendments to the Housing Development (Control and Licensing) Act 1966 (Act 118)² by Housing Development (Control and Licensing) (Amendment) Act 2007 (Act A1289);
- (c) amendments to the Housing Development (Control and Licensing) Regulations 1989 [P.U. (A)58/89]³ by Housing Development (Control And Licensing) (Amendment) Regulations 2007; and
- (d) introduction of a new statute known as the Building and Common Property (Maintenance And Management) Act 2007 (Act 663).⁴

¹ Act 318 came into operation on 1 June 1985 through P.U. (B) 276/1985.

² Act 118 came into operation on 29 August 1969 through P.U. (B) 212/69.

³ P.U. (A)58/89 came into operation on 1 April 1989. The Minister has the power to make regulations under s. 24(1) of the Housing Development (Control and Licensing) Act 1966.)

The legislative exercise in 2007 went beyond legislative attempt to accommodate gated communities and also include other matters which do not fall under the scope of our discussion. Chapter Four only examines legal provisions which are related to gated communities.

The discussion in this Chapter is divided into six parts. Part I is the introduction of the Chapter. Part II explores the legislative provisions of the statutes pertaining to issuance of titles for gated community housing schemes before 12 April 2007. Part III deals with the legal issues surrounding gated communities prior to the amendments to STA in April 2007, followed by Part IV which examines the legislative provisions after the 2007 amendments to the Strata Titles Act 1985 by Act A1290. Part V discusses the legal issues which arose after the amendments. Part VI examines the common legal issues relating to gated communities and Part VII is the conclusion.

II. LEGISLATIVE PROVISIONS PERTAINING TO ISSUANCE OF TITLE FOR GATED COMMUNITY HOUSING SCHEMES PRIOR TO 12 APRIL 2007

Prior to 2007 legislative exercise as mentioned before, it appeared that the issuance of title for gated community housing schemes was solely governed by the National Land Code

⁴ Came into operation on 12 April 2007 through Johor [P.U. (B) 137/2007]; Kedah [P.U. (B) 138/2007]; Kelantan [P.U. (B) 139/2007]; Melaka [P.U. (B) 140/2007]; Negeri Sembilan [P.U. (B) 141/2007]; Pahang [P.U. (B) 142/2007]; Penang [P.U. (B) 143/2007]; Perak [P.U. (B) 144/2007]; Perlis [P.U. (B) 145/2007]; Terengganu [P.U. (B) 146/2007]; Selangor [P.U. (B) 147/2007], Federal Territory of Kuala Lumpur and Federal Territory of Putrajaya [P.U.(B) 152/2007].

1965 (hereinafter referred to as "the NLC").⁵ The NLC is a general statute which regulates the registration, transfer of title and dealings of land in Malaysia. The Strata Titles Act 1985 (hereinafter referred to as "the STA") had no provision for gated communities. Similarly, the Housing Development (Control and Licensing) Act 1966 (hereinafter referred to as "the HDA") and the Housing Development (Control and Licensing) Regulations 1989 (hereinafter referred to as "the HDR") which govern sale and purchase of housing accommodations in Malaysia also had no clear provision for sale and purchase of properties in gated communities.

Under the NLC, the lot of land on which a gated community is developed is usually owned by the developer under a master title and the developer will have to apply to subdivide the land into separate individual titles.⁶ Only then can the developers transfer the land to the purchasers.⁷

Prior to the STA being amended in 2007 through Act A1290, namely the Strata Titles (Amendment) Act 2007,⁸ the STA had catered for two types of gated communities, being the townhouses and subdivided multistorey buildings. Other than the townhouses, landed properties in gated communities were solely governed by the NLC as the STA did not provide for the subdivision and provision of strata titles for landed houses. Due to this,

⁵ Act no. 56 of 1965.

⁶ In most situations, the developers of landed housing would submit their application for subdivision together with application for surrender and re-alienation, also known as *Serah Balik Kurnia Semula* or SBKS. The SBKS is discussed in detail at the later stage in this Chapter.

⁷ Prior to this, the developer must obtain consent for development from the local authorities as discussed in Chapter Three.

⁸ Came into force in the Federal Territory of Kuala Lumpur and in the Federal Territory of Putrajaya through PU(B) 148/2007 and in the states of Johore, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Terengganu through P.U. (B) 149/2007. The amendments took effect on 12 April 2007. The STA had undergone three amendments before 2007; in 1990 through the Amendment Act A753, in 1996 by the Amendment Act A951 and in 2001 by the Amendment Act A1107.

landed or conventional type of housing could only be awarded with conventional land titles under the NLC.

Under s. 24(2)(c) of the HDA, the Minister of Housing and Local Government may make regulations to prescribe the form of contracts to be used by a licensed housing developer and the purchasers. All developers and house purchasers of housing accommodation⁹ under the HDA and the HDR were required to sign a standard Sale and Purchase Agreement (hereinafter referred to as "the SPA") as provided by the HDR. For purchase of properties with conventional titles, the SPA was in the form of Schedule G while purchase of strata-titled properties was in the form of Schedule H of the HDR. The Regulation for a standard form of SPA was provided in Regulation 11(1) of the HDR. Regulation 11(1) read as follows:

Every contract of sale and purchase of a housing accommodation together with the subdivided portion of land appurtenant thereto shall be in the form prescribed in Schedule G and where the contract of sale is for the sale and purchase of a housing accommodation in a subdivided building, it shall be in the form prescribed in Schedule H.

The purchasers of landed and conventional-titled properties were required to sign the SPA in the form of Schedule G in the HDR, not Schedule H. Hence, purchasers of gated communities would have utilised the SPA in the form of Schedule G of the HDR as gated community properties could only be issued with conventional titles under the NLC and not strata titles under the STA.

⁹ Before being amended in 2007, s. 3 of the HDA defined housing accommodation as to include "any building, tenement or messuage which is wholly or principally constructed, adapted or intended for human habitation or partly for human habitation and partly for business premises but does not include an accommodation erected on any land designated for or approved for commercial development." After 2007, the definition of housing accommodation was amended in order to, *inter alia*, include service apartment.

As mentioned earlier, in 2007 the STA was amended by the Parliament via Act 1290 to, *inter alia*, cater for landed housing developments in the form of gated communities, along with the amendments to the HDA and the HDR via A1289 and P.U. (A) 395 respectively. With the amendments, gated communities in the form of landed properties can now be issued with strata titles. One of the effects of the amendments to the HDR is the purchasers of landed properties in gated communities are now required to sign the standard SPA in the form of Schedule H of HDR.¹⁰ The Building and Common Property Act (Maintenance and Management) Act 2007 was also introduced in 2007 to ensure proper maintenance and management of buildings and common properties for strata-titled properties.¹¹ The details of the amendments are discussed in Part IV of this Chapter.

The next part of the Chapter examines the legality of gated communities as well as other legal complications surrounding the developments of gated communities prior to amendments to the STA in 2007.

III. LEGAL ISSUES OF GATED COMMUNITIES PRIOR TO THE AMENDMENTS OF THE STRATA TITLES ACT 1985 IN 2007 BY ACT A1290

There were several legal issues associated with the developments of gated communities in Malaysia. The NLC does not provide for matters which were considered as integral to the conception of gated communities, which include privatisation of maintenance, provision for maintenance fee and for neighbourhood enclosure. While the concept of gated communities

¹⁰ Clause 8(a) of the Housing Development (Control and Licensing) (Amendment) Regulations 2007 amended regulation 11(1) of the Housing Development (Control and Licensing) Regulations 1989 (P.U. (A) 58/1989).

¹¹ Detailed explanation is given in Part IV of this Chapter.

was given due legal recognition in the STA in respect of townhouses and multistorey buildings, as explained earlier it did not provide for landed housing.

However, rightly or wrongly the developers had relied on the then existing law to accommodate gated communities which involved landed properties. Some developers resorted to the "landed-units-with-strata-titles concept",¹² although the legality of this move was questionable since the STA had previously only allowed for subdivision of building into parcels.

Majority of the developers employed the conventional land under the NLC for the houses while at the same time incorporating gated community concept for their developments.¹³ However, this practice was in conflict with several statutes including the NLC, the HDA, the HDR, the Street, Drainage and Building Act 1974, the Local Government Act 1976, the Road Transport Act 1987 and the Town and Country Planning Act 1976. Others went to the extent of resorting to the provisions under the STA and employed the concept under the STA for their gated communities. The legality of such adoption is discussed later.

The following discussion will assess the inadequacy of the provisions in the STA and the NLC, and will also explore other legal issues relating to gated communities developed before amendments were made to the STA in 2007 in relation to other relevant statutes. The main legal issues examined in Part II are the legality of the deed of mutual covenant and the legal status of the open space located inside gated communities.

¹² The developers of gated communities would apply to have the land in gated communities to be subdivided into strata titles. An example where such application was approved the authority is Desa ParkCity in Kuala Lumpur, developed by Perdana ParkCity Sdn Bhd.

¹³ An example is Tropicana Golf and Country Resort in Petaling Jaya, developed by Dijaya Corporation Berhad.

The legal issues in this Part are discussed in the following order:

- (a) the inadequacy of the NLC in providing for gated communities;
- (b) the inadequacy of the provisions in the Strata Titles Act 1985 in providing for gated communities;
- (c) the employment of deed of mutual covenant and related issues;
- (d) the legal status of the amenities, parks and open space located inside the gated communities under the LGA, the TCPA, the NLC and the SDBA;
- (e) the legality of the act of installing barriers in public space;
- (f) the responsibility of maintenance of facilities in gated communities; and
- (g) the legality of the agreement for rebate in assessment tax.

The discussions on these issues are as follows.

A. *The Inadequacy of the NLC in Providing for Gated Communities*

The NLC is the main statute governing the issuance of title for landed housing. Although a property with a conventional land title may be transferred under the NLC, to date the NLC has not provided for features associated with gated communities. Most developers employed the NLC to issue separate title to houses in gated community housing schemes, while some resorted to the STA.¹⁴ As previously mentioned, several aspects associated with gated communities such as the aspects of privatisation of maintenance, provision for

¹⁴ The provision in the STA is discussed later.

maintenance fee and restriction of public access to the gated communities were not provided for in the NLC. There is in fact no provision therein which defines what type of developments amount to a "gated community". Neither are other important concepts and features of a gated community such as:

- (a) the concept of shared ownership or common facilities;
- (b) the concept of private maintenance of a gated community;
- (c) the establishment of a management entity;¹⁵
- (d) the formation of a management account for the purchasers; and
- (e) the remedies available for the management entity to secure the collection of sinking funds and service charges.

The concept of "common facilities" in gated communities is similar to the concept of common property in strata developments.¹⁶ In most gated communities, although the open space is surrendered to the State Authority, the developer would retain the ownership of common facilities such as the clubhouse, swimming pool and sauna facilities, and they would continue to maintain these facilities after the residents had received their conventional land titles. Unlike "common properties" which belong to the residents in the strata developments collectively, common facilities in landed gated communities cannot be regarded as "common properties" as available in the strata developments. This was because the developers would retain the ownership of the common facilities and there was no law available to mandate the developer to surrender the common facilities to the residents of gated communities. As long as the developer owns the common facilities, the residents

¹⁵ The concept is similar to the concept of management corporation in strata development under the STA.

¹⁶ Common facilities refer to facilities which are available in a gated community. These facilities are built by the developers and can be used and shared by the residents who would have to pay for the maintenance fees to maintain the facilities. Examples of common facilities which are offered by the developers are the playground equipments, swimming pool, gymnasium, sauna room and golf course.

would have to pay to the developer for the maintenance of the facilities as per the agreement contained in the form of the deed of mutual covenant signed between the developer and the residents.

Since the NLC could not have catered for the concept of gated community housing schemes, the next consideration is whether the STA could provide for landed properties in gated communities.

B. *The Inadequacy of the Provisions in the Strata Titles Act 1985 in Providing for Gated Communities*

Prior to the amendments to the STA in 2007, the STA was inadequate in providing for gated communities. This was largely due to the provision in s. 6(1) of the STA which had restricted the provision of subdivision of building into parcels.

Before the amendment was made to s. 6(1) in 2007, land in gated communities cannot be subdivided into land parcel to be held under strata title. The pre-amendment s. 6(1) read as follows:

Any building or buildings having two or more storeys on alienated land held as one lot under final title (whether Registry or Land Office title) shall be capable of being subdivided into parcels; and any building or buildings having only one storey on the same land shall be capable of being subdivided into parcels to be held under strata titles or into accessory parcels.

Thus the basic requirements for the subdivision of building for strata titles were:¹⁷

- (a) the land must be in one lot;

¹⁷ Eng, Toh Swee, "The Role of Licensed Land Surveyors in Expediting Title Application for Strata Title", (2002) 2 *Jurnal Tanah*, p. 9.

- (b) the land must be under a final title; and
- (c) the building must be at least two stories or more and situated wholly within the lot.

The strata subdivision under the STA before the 2007 amendments was actually meant for horizontal subdivision of building. Double-storey bungalows, terraces or semi-detached houses built on the same lot of the multistorey building were clearly ousted by the STA, nonetheless single storey buildings built on the same lot of land together with a multistorey building could be issued with strata titles.

Nevertheless, some developers still resorted to the pre-amendment s. 6 of the STA as having allowed for buildings having one storey or more to be capable of being subdivided into parcels and be issued with strata titles; and land was considered as "accessory parcel"¹⁸ instead of a common property. This approach was clearly wrong as the provisions of the STA had only allowed for horizontal subdivision, not vertical and cannot be extended to one storey bungalow unless it is built on the same lot of land with a multistorey building.¹⁹ Furthermore, the roof and walls of the bungalows and terrace houses which were separate from the multistorey building were regarded as a common property same as the roofs of the multistorey building.²⁰ The ownership and the maintenance responsibility of the alleged common property in such scheme were questionable.

¹⁸ Tan, Bernard, "Gated Communities – The Concept and Vision", *Seminar on Gated Communities Scheme*, Kuala Lumpur, 15 September 2003.

¹⁹ There was no provision for single storey cluster housing. Teo, Keang Sood, *Hak Milik Strata di Malaysia*, (Malaysia: Dewan Bahasa dan Pustaka, 3rd ed., 1995), p. 103.

²⁰ Lan, Chin Sin, "Gated Communities – Legal Issues", (2004) 2 *Serlah- a Special Report for Clients of Raslan-Loong and Reeg Rechtsanwalte*, p. 7.

This arrangement also posed a problem in a situation where an owner of a house in a gated community wished to renovate his house. As the subdivision of title under the STA would set the boundaries as defined by the permanent construction appearance of the building,²¹ a renovation could alter the permanent construction of the building thus changing the boundaries, to which the owner had no right to do so under the law. It was therefore erroneous for the developers to rely on the STA for subdivision of properties in gated communities.

C. *The Employment of Deed of Mutual Covenant and Related Issues*

As discussed above, most of the houses in gated communities prior to the 2007 amendments were issued with conventional land titles. The purchasers were therefore required to sign the SPA in the form of Schedule G of the HDR. Unlike Schedule H, the clauses in Schedule G of the HDR did not provide for by-laws that regulate community living in gated communities. The local conveyancing lawyers attempted to fill this vacuum by requiring the purchasers to sign another set of agreement simultaneously with the SPA. This additional set of agreement is known as the deed of mutual covenant (hereinafter referred to as "the DMC").²²

Legal practitioners treat the DMC as a supplementary agreement that exists side by side with the standard SPA prescribed in Schedule G of the HDR. The DMC addresses matters such as maintenance of the facilities in gated communities, collection the maintenance fees,

²¹ Section 10(1)(b)(ii), STA.

²² Sometimes, it is also referred to as the deed of mutual agreement.

liabilities and limitations of parties. A typical DMC contains the following contents, though the actual contents may differ for different developments:

- (a) the description of a road management agreement between the developer and the local authority;
- (b) maintenance of services by developer;
- (c) the power of the developer to appoint a person, firm, body or company to perform any maintenance of services or to surrender the duty to the purchasers or the authority;
- (d) the obligation of purchasers to pay the monthly fees prescribed for the purpose of maintenance and security, and the remedy for default of payment;
- (e) prohibition of subdivision, partition and amalgamation of properties;
- (f) guidelines for use of the property, such as the duty to maintain the lawn, location of rubbish bin and containers, drying of laundry, letter box suitability, keeping of pets, display of signs and such, parking of cars, storing of dangerous items, place of worship, prohibition of property usage other than for residential purpose, no exterior fire allowed except for barbecuing and conditions of renovation works.
- (g) effect of default by the purchasers;
- (h) the binding of covenants on subsequent purchasers;
- (i) the common rights of purchasers;
- (j) service of notice; and
- (k) endurance of obligations.

The parties were bound to follow the contract as stated in the DMC. Since the initial purchaser was the party who signed the DMC with the developer, problem could arise in a

situation where the initial purchaser sold the property to a subsequent purchaser who was not a party to the agreement between the initial purchaser and the developer. The main issue which arose from this practice was the enforceability of the DMC against a subsequent purchaser of the property as the burden of a freehold covenant cannot be enforced against the subsequent purchaser, as enunciated in the case of *Austerberry v Corporation of Oldham*,²³ and approved by the House of Lords in *Rhone and another v Stephens*.²⁴

To address the issues relating to the DMC, the following discussion is divided into three parts. Part 1 examines the legality of the DMC as an additional agreement to be signed together with the SPA in the form of Schedule G by the purchasers of gated communities. Part 2 considers whether subsequent purchasers of properties in gated communities are bound by the DMC signed by the original purchasers with the developer, and Part 3 discusses whether the DMC can be regarded as easement under the NLC, or be regarded as equitable easement or as restrictive covenant in equity such that it could be enforced against the subsequent purchasers.

1. *The Legality of a Deed of Mutual Covenant*

The NLC, the HDA and the HDR did not provide for DMCs as adopted by the developers, but there was no provision to prohibit such agreement between the original purchaser and the developer. The DMC was considered as a necessary tool for the developers and the

²³ (1885) 29 Ch D 750 (CA).

²⁴ [1994] 2 WLR 429.

purchasers as gated communities aimed to promote privatisation of space within the neighbourhood and consequently would require the residents to pay monthly contribution for the maintenance of the property and the provision of security in the neighbourhood.

The fact that no statutes provide for a DMC does not *per se* invalidate the DMC in our law. As discussed earlier, most DMCs provided for certain provisions which were not available in Schedule G of the HDR. A DMC which is not in conflict with the HDA or the HDR is still considered as valid and can be enforced as a contract.

Section 206(3) of the NLC 1965 permits contractual operation of any transaction relating to alienated land or any interest therein. It was held by the Federal Court in *Inter-Continental Mining Sdn Bhd v Societe des Etains de Bayas Tudjuh*²⁵ that in some cases, the remedy of specific performance or damages *in lieu* thereof may be obtained in respect of the agreement.²⁶

Section 206 of the NLC states the following:

- (1) Subject to the following provisions of this section -
 - (a) every dealing under this Act shall be effected by an instrument complying with the requirements of sections 207 to 212; and
 - (b) no instrument effecting any such dealing shall operate to transfer the title to any alienated land or, as the case may be, to create, transfer or otherwise affect any interest therein, until it has been registered under Part Eighteen.
- (2) The provisions of sub-section (1) shall not apply to -
 - (a) the creation of, or other dealings affecting, tenancies exempt from registration (which may be effected, instead, as mentioned in subsection (2) of section 213); or
 - (b) the creation of liens (which may be created, instead, as mentioned in section 281).
- (3) Nothing in sub-section (1) shall affect the contractual operation of any transaction relating to alienated land or any interest therein.

²⁵ [1974] 1 MLJ 145.

²⁶ Teo, Keang Sood and Khaw, Lake Tee, *Land Law in Malaysia: Cases and Commentary*, (Kuala Lumpur: Butterworths Asia, 2nd ed, 1995), p. 194.

According to s. 206(3), failure to register a registrable dealing under the NLC does not render the contractual operation of any transaction of alienated land or any interest invalid. A DMC is valid as a contract under the Contracts Act 1950.²⁷ In the case of *Bijak Utama Sdn Bhd v. Adwin Sdn Bhd*,²⁸ the High Court recognised the status of a DMC as a valid contract. The court held that the consideration in a DMC was the mutual covenants. As nothing was raised to show that there was any coercion, undue influence, fraud, misrepresentation or mistake by the parties,²⁹ the DMC was considered as a valid contract.

Since the DMC is not backed up by any legislation in Malaysia, its violation constitutes merely a breach of contract under the Contracts Act 1950. A breach in the DMC would allow the party to claim for a remedy of breach of contract.

A potential scenario from this practice is that a purchaser who has no problem in signing the standard SPA might nonetheless refuse to sign the DMC. The question is whether a purchaser is legally bound to sign a DMC? One view would be that since a transfer of title for conventional landed property is effected by the instrument of Form 14A under s. 215(1) of the NLC,³⁰ the refusal to sign a DMC by a purchaser would not affect his right to the property. In practice, however, the developers had tried to compel the purchaser to sign it as a condition for sale of the property; an act which is not prohibited by the governing statutes. Nonetheless, the purchaser is not obligated under the law to sign the DMC to affect the transfer of the property.

²⁷ Act 136.

²⁸ 1997 MLJU LEXIS 596; [1997] 119 MLJU 1.

²⁹ As to render a contract being voidable as in s. 2(i) the Contracts Act 1950.

³⁰ Under s. 215(1) of the NLC, the transfer under NLC of any alienated land shall be effected by an instrument in Form 14A.

2. *Enforceability of the DMC on the Subsequent Purchaser*

It is common to find the original purchaser of a house in gated community to later sell his property to another buyer, who would subsequently become the owner of the property.³¹ A number of legal practitioners were of the view that although the DMC was not signed by the subsequent purchaser, the DMC is equally binding on him.

Prior to the amendments to the HDA and the HDR in 2007, Regulation 11A of the HDR provided for the requirement of consent from the developer to “any purchaser or subsequent purchaser of a housing accommodation to assign his rights and benefits to and in the contract of sale to any financial institution providing a loan for such purchaser to finance or part finance the purchase of the housing accommodation”, provided that the separate title of that property had not been issued to the original purchaser. As a condition for consent, some developers would require the subsequent purchaser of the property to sign a DMC similar to the one that the original purchaser had signed with the developer. The requirement for the developer’s consent was later removed, rendering the requirement to sign a DMC as a condition for consent for sale of property as irrelevant.³²

³¹ The new buyer is commonly referred to as “the subsequent buyer” in matter relating to the effect of the DMC on such new buyer.

³² The requirement for consent in Regulation 11A, HDR was removed by Regulation 9 of the Housing Development (Control and Licensing) (Amendment) Regulations 2007 (P.U. (A) 395). By virtue of the amended Regulation 11A, in situations where no separate title has been issued, the developer is required to execute the instrument of title “within twenty one days from the date the separate title is subsequently issued and received by the housing developer from the Appropriate Authority and the housing developer shall forward such title to the purchaser who shall execute the instrument of transfer within twenty one days from the receipt of the same from the housing developer.” Apart from that, any developer who requires consent for an absolute assignment under s. 22D(1) of the HDA shall be guilty of an offence under s. 22D(6) of the same Act. If convicted, the developer shall be liable to a fine which shall not be less than fifty thousand ringgit but which shall not exceed one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

The writer is of the opinion that the DMC signed between the original purchaser and the developer does not have a binding effect on the third party who becomes the successor of the property since he did not sign the original DMC. There is no privity of contract between the developer and the subsequent buyer of the property.³³ Contractually, the conditions in the DMC cannot be imposed on the successor. However, the absence of the DMC can cause problems affecting the concept of gated communities and might lead to potential conflicts between the residents.

Therefore, unless the subsequent purchaser of a house in a gated community willingly agrees to sign the DMC with the developer, there is no law to force him to sign it. Moreover, the requirement for developer's consent has now been removed from the HDR by the Housing Development (Control and Licensing) (Amendment) Regulations 2007. As a result, the developer would have to resort to other alternatives in enforcing the DMC on subsequent purchasers who refused to sign the DMC with the developer. The alternatives in enforcing the DMC on the subsequent purchaser are discussed as follows.

3. *Possible Legal Approaches to Enforce the DMC on the Subsequent Purchaser*

The discussion now proceeds to consider whether the DMC can bind the subsequent purchaser to the DMC signed by the original purchaser; first by having the DMC registered as an easement; second, as an equitable easement; or third, as a restrictive covenant in

³³ *Austerberry v Corporation of Oldham* (1885) 29 Ch D 750 (CA) and *Rhone and another v Stephens* [1994] 2 WLR 429.

equity. These alternatives could be considered by the developers and the purchasers of gated communities, although each option has its own limitations as discussed below.

i. *Whether the DMC can be considered as an easement*

By examining the clauses in the DMC, can the DMC be registered as an easement? It has been suggested that some clauses in the DMC can be considered as an easement under the NLC,³⁴ provided that the developer retains a lot in the gated community. If the clauses can be deduced as to give rise to easement under the NLC, it can therefore be registered as an easement and be enforced on the subsequent purchaser of the property in gated communities.

By virtue of Part Seventeen of the NLC,³⁵ an easement is construed as a transaction amounting to a dealing. Easement is any right granted by one proprietor to another through an express grant³⁶ for the beneficial enjoyment of the latter's land in accordance with the provisions of Chapter I Part Seventeen of the NLC.³⁷ The land which receives the benefit is known as the dominant land and the land by which the easement is granted is known as the servient land.³⁸ Rights capable of being granted as easement include right by the owner of the dominant land to do something in, over or upon the servient land and any right not to

³⁴ Fernandez, Derek, "Law & Realty: Gated and Guarded Communities (Part 2)", *The Sun*, 6 July 2007.

³⁵ Part Seventeen comprises of sections relating to creation, release, extinguishment and cancellation of easement.

³⁶ Section 284, NLC.

³⁷ Section 282(1), NLC.

³⁸ Section 282(3), NLC.

have something done on the servient land,³⁹ but exclude a right to take anything from the servient land or right of exclusive possession of any part thereof.⁴⁰

The effect of an easement grant is explained in s. 286(5) of the NLC:

Any such agreement, and any agreement in the grant for the making of periodic payment by way of consideration therefor, shall be binding on the proprietor by whom it is entered into in respect only of the period during which his proprietorship continues to subsist, and in respect of any subsequent period, shall be binding on his successor in title for the time being.

The effect of this section is to bind not just the proprietor of the servient land but also the subsequent successor in title of that land. Unless the grant of easement has been released by the dominant proprietor⁴¹ or extinguished as in s. 290 of the NLC or cancelled by the Registrar,⁴² it remains valid.

Applying the principles relating to the creation of easement as in the NLC, the developer may create easement for each lot of land sold to the purchaser. The developer who retains ownership in a lot of land in the gated community may be considered as the owner of the dominant land. The developer may create a negative easement affecting the servient land to prohibit the servient land owner from doing certain things on his land. The negative easement may contain certain restrictions which are similar to the provisions in a DMC, for example restrictions on subdivision, partition and amalgamation of properties, and renovation works affecting the exterior part of the houses.

³⁹ Section 283(1), NLC.

⁴⁰ Section 283(2), NLC.

⁴¹ Section 289(1), NLC. Consent by the lessee, tenant or chargee in benefit of the dominant land is required in s. 289(3).

⁴² Section 291, NLC.

Therefore, several provisions in the DMC which are negative in nature are capable of being registered as easement under the NLC. In a gated community, an easement can be created if the developer retains the ownership of a property in the gated community such as the clubhouse or any particular house in the neighbourhood. The developer can ask every potential purchaser to sign an easement before the developer sells the property to the respective purchaser. In such situation, the developer is considered as the owner of the dominant land while the purchasers are considered as owners of the servient lands. The express easement which has been signed by the servient proprietor would have the effect of binding a subsequent purchaser.

Nonetheless, whilst some clauses in the DMC are relevant particularly in the creation of a negative easement, positive obligations under the DMC, such as the duty to pay the developer for maintenance and for security of gated communities cannot be registered as easement under the NLC as such duties do not amount to a right of the dominant land owner to do something on the servient land. Further, the developers as the owner of the dominant land and a party to the easement would have to retain a lot in the gated community and in most cases, the developers have no intention to be present perpetually. To overcome this problem, the House of Lords in *Halsall v Brizell*⁴³ referred to the decision in *Elliston v Reacher*⁴⁴ and held that a person who acquires the benefit of a transaction must also accept the burdens that transaction imposes.⁴⁵ This is known as the doctrine of mutual benefits and burdens. The application of such doctrine in Malaysia will allow the developer to impose certain restrictions as contained in the DMC on the

⁴³ [1957] 1 All ER 371, [1957] Ch 169, [1957] 2 WLR 123.

⁴⁴ [1908] 2 Ch. 665.

⁴⁵ Butt, Peter, *Land Law*, (Sydney: Lawbook Co., 2001), p. 434.

subsequent purchasers. The subsequent purchasers, however, still retain the option of whether to accept or reject the benefit and burden.

ii. *Whether the DMC can be considered as equitable easement*

If no legal easement was registered, an equitable easement may arise under s. 206(3) of the NLC by reason of an agreement by which a right of easement was intended to be created.⁴⁶

It must be noted that "equity will follow the law and treats as done what ought to be done" as enunciated in *Walsh v Lonsdale*,⁴⁷ where the court held that equity treats an agreement to grant a lease on the same footing as a lease which is a registrable interest under the Code.⁴⁸

An easement agreement which is not registered under the NLC may nevertheless be valid as an equitable easement. An equitable easement may arise in three situations; by reason of proprietary estoppel, the doctrine of constructive trust, or its creation may be the subject matter of a contractual obligation implied into an agreement by reason of necessity.⁴⁹

The leading case for equitable easement in Malaysia is the case of *Alfred Templeton & Ors v Low Yat Holdings Sdn Bhd*,⁵⁰ wherein the High Court held that although the SPA agreement between the parties had not expressly provided for a creation of an easement of way under the NLC, the clause was implied into the contract as it was obviously necessary

⁴⁶ Such as that happened in the case of *Templeton & Ors v Low Yat Holdings Sdn Bhd & Anor* [1993] 1 MLJ 443 and discussed in Teo and Khaw, *op. cit.*, p. 831.

⁴⁷ (1882) 21 Ch D 9.

⁴⁸ *Luggage Distributors (M) Sdn Bhd v Tan Hor Teng & Anor* [1995] 1 MLJ 719. The court may order specific performance of the agreement and in a case regarding lease, the lessor may be directed to execute a formal lease in a registrable form. Alternatively, a declaration in suitable terms may be granted. *Siew Soon Wah & Ors v Yong Tong Hong* [1973] 1 MLJ 133.

⁴⁹ *Alfred Templeton & Ors v Low Yat Holdings Sdn Bhd* [1989] 2 MLJ 202 and Teo and Khaw, *op. cit.*, p. 831.

⁵⁰ [1989] 2 MLJ 202.

to make the agreement workable. The court recognised the law on implied terms as implied by statute or by custom or by reference to the principle in *The Moorcock*,⁵¹ where it was held that “the terms would be implied by law where they arose from the presumed intention of the parties and were necessary to give efficacy to the parties’ transaction”.⁵² The principle *The Moorcock* was followed in the case of *Shirlaw v Southern Foundries Ltd*⁵³ where it was stated that the law would imply “something so obvious it goes without saying”.

If an equitable easement exists, the court could order the party to give effect to it by executing Form 17A under s. 286(1) of the NLC and have it registered.⁵⁴ His Lordship

Justice Edgar Joseph Jr:

In the present case, cl 11 does not expressly provide for the creation of an easement of way under the provisions of ss 286(1) and 288(b) of the Code. Yet, approaching the matter on the basis of officious bystander test, I think it could be confidently predicted that had the parties concerned been asked about the inclusion of such a clause, they would have regarded it as going without saying that the same was to be implied for it was so obviously necessary to give business efficacy to the agreement, that is to say, to make it workable.⁵⁵

As stated above, some of the clauses in a DMC contain restrictions on the rights of a purchaser. Examples of restrictions on rights of a purchaser in a gated community include the prohibition of changing the external appearance of the house, restrictions on parking on one’s property and conducting garage sale. It is suggested that equitable easement may arise since its creation may be the subject matter of a contractual obligation implied into the

⁵¹ (1889) 14 PD 64.

⁵² At p. 219.

⁵³ [1939] 2 KB 206.

⁵⁴ *Alfred Templeton & Ors v Low Yat Holdings Sdn Bhd* [1989] 2 MLJ 202.

⁵⁵ *Id.*, p. 219.

DMC by reason of necessity as suggested in *Templeton & Ors v Low Yat Holdings Sdn Bhd & Anor.*⁵⁶

Therefore, if no legal easement was registered, equity can come in and assist the parties as equity also looks at the intention rather than the form. The agreement to create an easement can be effected by the court under the notion of equity. It is suggested that if the DMC contains provision to give effect to an easement, then the court can give effect to it although it was not registered as an easement under the NLC.

The limitation of this approach is that the application of equitable easement, as well as legal easement, on the third party or the subsequent purchaser could only take effect in equity through notice. Equitable easement can bind the subsequent owner of the servient land who purchased the land with notice of the equitable easement. In gated communities, it is submitted the subsequent purchasers would be able to obtain such notice, whether actual or constructive, as developments of gated communities come with the restrictions as stated above. Under the DMC, it is an obligation on the part of the original purchaser to require the subsequent purchaser to sign a similar DMC with the developer. It is submitted here that the requirement of notice is satisfied in this situation where a purchaser has read the DMC or when he was informed about the restrictions in the gated community as contained in the DMC by the original purchaser.

⁵⁶ The developer must be able to show that if both parties were asked about the inclusion of missing clauses amounting to a creation of an easement in the DMC, both parties would have replied in positive so as to say that the matter is so obvious that it could be implied without saying.⁵⁶ The court would still have to consider whether the owner of the dominant land can still enjoy his land if the equitable easement was not granted to him or whether there was any necessity to grant the easement.

iii. *Whether the DMC amounts to a restrictive covenant*

Under English land law, equity recognises covenants which are negative or restrictive of the user of land as restrictive covenant⁵⁷ and it is binding on the subsequent purchaser of the land. Hence, an issue is whether the DMC can be treated as a restrictive covenant which is essentially an equitable principle recognised under the English land law? As with equitable easement, the DMC is useful if the developer retains a lot in the gated community.

A covenant is an "agreement contained in a deed in which one party (the covenantor) promises another party (the covenantee) that he will or will not engage in some specified activity in relation to a defined area of land."⁵⁸ It can either be a positive covenant or a negative covenant. In equity, only restrictive or negative covenant can pass the burden to the subsequent land owner.

A restrictive covenant is "an agreement made by a proprietor of land restricting the use of the particular land for the benefit of other land".⁵⁹ Restrictive covenant is recognised as a species of contractual agreement which has been elevated to the status of proprietary right by the English courts under its equitable jurisdiction⁶⁰ and has been used primarily to safeguard various types of "amenities considered important for enlightened urban planning and civilised coexistence."⁶¹ The effect of restrictive covenant is binding on the covenantor

⁵⁷ Kevin Gray & Susan Francis Gray, *Land Law*, (London: Butterworths, 1999), p. 194.

⁵⁸ Gray & Gray, *op. cit.*, p. 365.

⁵⁹ Teo and Khaw, *op. cit.*, p. 847.

⁶⁰ Gray & Gray, *op. cit.*, p. 193.

⁶¹ Gray & Gray, *op. cit.*, p. 191.

as well as on the subsequent purchaser of the covenantor's property. For restrictive covenant to take effect in equity, it must have the following characteristics:

- (a) the covenant must be restrictive in nature;
- (b) the covenant must relate to an identifiable dominant tenement;
- (c) the covenant must benefit or accommodate the dominant tenement; and
- (d) the covenant must have been intended to run with the covenantor's land.⁶²

A restrictive agreement recognised by equity is of the nature of a proprietary right since it has a binding effect on a subsequent purchaser of the covenantor's land, who has notice of the covenant. The court would look at the substance rather than the form in determining whether a clause can be considered as a restrictive covenant or otherwise.⁶³ Apart from that, the owner of the land, to which the benefit of a covenant restricting the use of other land has been attached, may enforce that restriction by injunction against all persons who subsequently occupy the burdened land unless they obtain a legal estate for value without notice of the covenant,⁶⁴ based on the principle of equity.⁶⁵

In order for a restrictive covenant to take effect in equity, the covenants must be between two land owners limiting the use of the land of one for the benefit of the other.⁶⁶ In a gated community, the DMC is signed between the developer and the purchaser. In order to have a control over the gated community through the restrictive covenant, the developer must be the registered proprietor of a piece of land in the neighbourhood before entering into a

⁶² Gray & Gray, *op. cit.*, p. 194.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ *Tulk v. Moxhay* [1843-60] All ER Rep 9.

⁶⁶ Gray & Gray, *op. cit.*, p. 365.

restrictive covenant with the purchaser. Among the restrictions in the DMC which can be included in the restrictive covenant are:

- (a) the covenantor's land shall not be used for the purpose of trade of business and can only be used for residential purposes only;
- (b) restriction on colour or tone of the house paint;
- (c) type of pets kept by the covenantor;
- (d) prohibition of amalgamation, subdivision and partition of properties;
- (e) prohibition on the type of exterior fire except for barbecuing; and
- (f) prohibition of carrying renovation works at certain hours of the day.

However, it must be noted that a benefit in a restrictive covenant is also capable of being passed on to a successor in title through annexation, assignment and building scheme.

Among these three methods, the building scheme or scheme of development is the best way of passing a positive burden to proprietors of properties in gated community, as long as there is an identifiable scheme and a mutually perceived common intention between all the proprietors to be bound by the restriction in the scheme.⁶⁷ This is one of the most relevant types of covenant for gated community housing scheme, with the intention of passing the benefit in the scheme to other purchasers in the same scheme. This approach ensures mutual enforceability of covenants between owners of the land sold as part of a subdivision of estate.

In Malaysia, the doctrine of restrictive covenant is considered as a right under equity and has been questioned as an interest under the NLC. A DMC which amounts to a restrictive

⁶⁷ Gray & Gray, *op. cit.*, pp. 376-378 and Bradbook, Adrian J. et al *Australian Real Property Law*, (Sydney: Lawbook Co., 2007), p. 462. The parties must adhere to the requirements of such scheme as laid out in *Elliston v Reacher*, (1908) 2 Ch 374.

covenant is only applicable in contract between the two original parties who entered into such agreement. The Federal Court decided that in Sabah, the application of restrictive covenant is allowed in the case of *Tam Kam Cheong v Stephen Leong Kon Sang & Anor*⁶⁸ based on equitable principle.⁶⁹ This doctrine was accepted in the High Court case of *Alfred Templeton & Ors v. Low Yat Holdings Sdn Bhd & Anor*.⁷⁰

However, *Teo and Khaw* were of the view that as equitable doctrine of restrictive covenant originated from the English land tenure system, it is thus prohibited by s. 6 of the Civil Law Act 1956.⁷¹ The view was that since restrictive covenant was not a registrable interest under the NLC in the context of Malaysian Torrens system, it did not have a binding effect upon subsequent title or interest.⁷² There has been judicial opinion that the NLC is a complete and comprehensive code governing the tenure of law in Peninsular Malaysia in *United Malayan Banking Corporation Bhd & Anor v. Pemungut Hasil Tanah, Kota Tinggi*.⁷³ It was therefore suggested by *Teo and Khaw* that the only type of restrictive covenant recognised is a covenant which amounts to a negative easement under the NLC.⁷⁴ It is also questionable whether the decision of the case can be applied in Peninsular Malaysia since the case of *Tam Kam Cheong* originated from Sabah where the modified

⁶⁸ [1980] 1 MLJ 36.

⁶⁹ Section 3(1) of the Civil Law Act 1956:

"Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia, the Court shall –

(a) in West Malaysia or any part thereof, apply the common law of England and the rules of equity as administered in England on the 7th day of April 1956...". Notwithstanding this section, s. 6 of the Civil Law Act 1956 prohibits the introduction of any part of the law of England relating to the tenure or conveyance or assurance of or succession to any immovable property or any estate, right or interest therein.

⁷⁰ [1989] 2 MLJ 202.

⁷¹ *Teo and Khaw, op. cit.*, p. 854.

⁷² *Teo and Khaw, op. cit.*, p. 855.

⁷³ [1984] 2 MLJ 87, p. 91.

⁷⁴ *Teo and Khaw, op. cit.*, p. 855.

Torrens system is not applicable.⁷⁵ Nevertheless, the present judicial approach appears to recognise the application of restrictive covenant in land in Malaysia.

If the doctrine of restrictive covenant is to be applied in gated communities, the limitation for the application as pointed out at the beginning of the discussion is that the developer has to retain a lot in the gated community before he could enter into an agreement with the purchaser. By retaining a lot, the developer could be regarded as the covenantee in a restrictive covenant. Failure to do so would limit the legal effect of the DMC as a contract only.

D. *The Legal Status of the Amenities, Parks and Open Space Located Inside the Gated Communities under the LGA, the TCPA, the NLC and the SDBA*

One of the reasons why gated communities are popular among purchasers is that they restrict non-residents from entering the neighbourhood. By limiting public access to the housing area, the privacy and security of the residents are hoped to be preserved. However, there have been objections by the public as they are not able to use the road or utilise the facilities inside gated communities, such as the playground and the recreational park. One example of such objections was made by the 250 terrace and semi-detached residents of conventional housing in Sungai Buloh Country Resort, Selangor, where the bungalow residents of the gated community located in the same area had restricted non-residents of from using the road in their enclave.⁷⁶ The basis of this public objection was that the roads should be made available to the public according to some legal provisions.

⁷⁵ *Ibid.*

⁷⁶ Masami Mustaza, "Jalan Seroja's a public road, says council", *The Malay Mail*, 4 June 2007.

In order to determine the legal status of the amenities, parks and open space in gated communities, the provisions in several statutes need to be examined. The relevant statutes relating to this matter are the NLC, the Local Government Act 1976 (hereinafter referred to as "the LGA"), the Town and Country Planning Act 1976 (hereinafter referred to as "the TCPA") and the Street, Drainage and Building Act 1974 (hereinafter referred to as "the SDBA"). As discussed below, with reference to some legal provisions, the open space and the public street in the gated communities are considered as public place and should therefore remain open to the public. The relevant provisions in these statutes will be discussed together as they are related to each other.

1. *The Local Government Act 1976 ("LGA")*

The term "public place" is defined in s. 2 of the LGA as "any open space, parking space, garden, recreation and pleasure ground or square, whether enclosed or not, set apart or appropriated for the use of the public or to which the public shall at any time have access." Amenities provided in gated communities, such as parks, playgrounds, recreational grounds, gardens and parking space are under the general control and care of the local authorities as stated in s. 63 of the LGA. The local authorities may therefore allow the public to use the amenities provided in gated communities. The residents who live in gated communities do not appear to have the right to prevent the public from entering and using the facilities provided.

Although the definition of public place as stated in s. 2 of the LGA also include “open space”, the term “open space” in s. 2 of the LGA is not defined in the LGA itself. Therefore a reference to the TCPA on the definition of open space is necessary.

2. *The Town and Country Planning Act 1976 (“TCPA”)*

Section 2(1) of the TCPA defines “open space” as “any land whether enclosed or not which is laid out or reserved for laying out wholly or partly as a public garden, park, sports and recreation ground, leisure place, walk or as a public space.”⁷⁷ A portion of land in the housing is reserved for the provision of open space⁷⁸ and this open space should remain open for public. The requirement for a developer to surrender a portion of development for the purpose of open space is provided in the NLC.

3. *The National Land Code 1965 (“NLC”)*

As has been related to earlier, prior to the amendments to the STA in 2007, there was no law to allow local authorities to approve gated communities. It is pertinent to note that in applying for individual titles for conventional housing under the NLC, the roads, drains, open spaces and public utility areas are to be surrendered to the local authorities as a

⁷⁷ Also see s. 2(f) of the Town and Country (Amendment) Act 1995 (Act A933).

⁷⁸ Recreational area and public space are also considered as open space under the TCPA.

condition for sub-division and for the issuance of the Certificate of Completion and Compliance.⁷⁹

The provision for subdivision of land is provided in s. 135 of the NLC. However, the common practice by developers is to submit their application for subdivision together with application for surrender⁸⁰ and re-alienation, also known as *Serah Balik Kurnia Semula* or SBKS. The "Surrender and Re-Alienation – Special Provisions" were included in the NLC through s. 76 of the NLC (Amendment) Act 1984 (Act A587), which came into force on 25 March 1985.⁸¹ Sections 204A to 204H of the NLC allow for surrender and re-alienation of contiguous lots held under Registry Title. This procedure is a shortcut for developers who wish to subdivide their land into many lots simultaneously.

Section 204B states that the State Authority may approve⁸² the surrender of lands under qualified title or final title, or both types of land which are contiguous and held by the same proprietor if certain portions of the land comprised therein be immediately re-alienated to the proprietor in different portions and units or in different units. The application for surrender and re-alienation of such land must fulfil the requirement as stated in s. 204C(1) of the NLC.⁸³ Upon receiving the application with the relevant documents, the Land

⁷⁹ Gurjit Singh, "Up Close and Personal with Gated & Guarded Communities", *New Straits Times*, 30 July 2005. Previously, the Certificates of Fitness for Occupation (CFO) was issued instead of the CCC.

⁸⁰ Under s. 195(1), NLC, the proprietor can surrender either whole or part of his land.

⁸¹ Koperasi Pegawai Pentadbiran dan Pengurusan Tanah Malaysia Berhad, *A Manual on the NLC*, (Kuala Lumpur: Koperasi Pegawai Pentadbiran dan Pengurusan Tanah Malaysia Berhad, 2002), p. 158.

⁸² Section 204E(1), NLC 1965 states that the State Authority has a discretion on whether to approve it or not.

⁸³ Section 204C(1), NLC stipulates the following:

No surrender and re-alienation under this Part shall be approved by the State Authority unless the following conditions are satisfied -

(a) that the portions and units of the land to be re-alienated conform in shape, area, measurements, location and intended use with a layout plan approved by the appropriate authority;

Administrator will endorse a note on the register document of title and the procedure to be followed is stated in s. 204D (3).⁸⁴

Once approved, the Land Administrator will inform the proprietor and notify the terms of approval⁸⁵ of the alienation, and also request the proprietor to pay the whole amount in Form 5A⁸⁶ for each unit.⁸⁷ The proprietor upon accepting the terms of re-alienation must pay the amount required. A memorial of the surrender will be made in the register document of title⁸⁸ and the land will be reverted to and vested in the State Authority as State land, but the land is to be treated as being the subject of approval of the re-alienation as in s. 204E.⁸⁹ The Land Administrator will act to register and issue the qualified title in respect of the units approved for alienation,⁹⁰ and the issue document of title will be destroyed.

Section 204D(1)(c) of the NLC 1965 requires a proprietor of land who wishes to surrender his land for the purpose of re-alienation by the State Authority under this section to submit an application in Form 12D together with, among others, a plan showing the lots to be surrendered together with a pre-computation plan showing the details of the portions and units to be surrendered. The pre-computation plan must be approved by the local authority

(b) that no item of land revenue is outstanding in respect of the land;(c) that the land is not under attachment by any court;

(d) that there are no registered interests in the land; and

(e) that every person or body specified in sub-section (2) has consented in writing to the making of the application.

⁸⁴ Koperasi Pegawai Pentadbiran dan Pengurusan Tanah Malaysia Berhad, *op.cit.*, p. 161. Section 204D(3), NLC stipulates that "upon receipt of the application, the Land Administrator shall endorse, or cause to be endorsed, a note thereof on the register document of title to the land."

⁸⁵ Section 204E(3), NLC 1965.

⁸⁶ A notice that land revenue is due.

⁸⁷ Pegawai Pentadbiran dan Pengurusan Tanah Malaysia Berhad, *op.cit.*, p. 163.

⁸⁸ Section 204G(1), NLC.

⁸⁹ Section 204G(2), NLC.

⁹⁰ Section 80(3), NLC.

before it can be accepted and processed by the land office.⁹¹ In this plan, the open space area will be marked and considered as surrendered to the government, no longer belonging to the proprietor. The open space must be maintained and kept in good condition before it can be handed over to the State Authority⁹² and the State Authority can demand this as one of the conditions for issuance of CCC.⁹³

Apart from the NLC, the requirement to reserve some parts of the land as open space is also provided in guidelines issued by the Town and Country Planning Department of Peninsular Malaysia⁹⁴ to uphold "the importance of open space as one of the social infrastructures that should be provided in development area."⁹⁵ The Town and Country Planning Department of Peninsular Malaysia issued a *Planning Standard for Open Space and Recreation* to standardise the requirement, including the size of open spaces around the country. The first set of guidelines, the JPBD 21/97, was issued in 2000. This was followed by the second set of guidelines namely the JPBD 7/2000 guidelines, published in 2005 as an addendum to the JPBD 21/97 guidelines. As part of the implementation policy, several types of development such as housing, commercial, industrial, mixed, tourism and institutional developments must allocate at least ten per cent of their development areas for open space and recreation.⁹⁶ The JPBD 21/97 guidelines state that the State Authority shall reserve and gazette open spaces approved in the Development Plans.⁹⁷ Open space gazetted by the State Authorities must remain open to the public.

⁹¹ Circular from Ketua Pengarah Ukur dan Pemetaan Bil. 2/1993: Pelan Pra-Hitungan (Pre-Computation Plan). The procedure is as discussed in Chapter Three.

⁹² Guideline 3.0 (iv) JPBD 21/07.

⁹³ Guideline 3.0 (v) JPBD 21/07.

⁹⁴ A department under the wing of the Ministry of Housing and Local Government Malaysia.

⁹⁵ Foreword by the Director-General of Town and Country Planning Department, Peninsular Malaysia in JPBD Planning Standards 21/97.

⁹⁶ *Id.*, p. 5.

⁹⁷ Guideline 3.0 (iii) of the JPBD 21/97.

4. *The Street, Drainage and Building Act 1974 ("SDBA")*

Roads and street are part of land that are required to be surrendered to the State Authority for the purpose of re-alienation as discussed before. Section 3 of the SDBA defines "street" as:

any road, square, footway or passage, service road, whether a thoroughfare or not, over which the public have a right of way, also the way over any bridge, and also includes any road, footway or passage, open court or open alley, used or intended to be used as a means of access to two or more holdings, whether the public have a right of way over it or not; and all channels, drains, ditches and reserves at the side of any street shall be deemed to be part of such street.⁹⁸

Once the land has been surrendered to the State Authority, the road can be gazetted as public street under the SDBA. "Private street" is defined in s. 3 of the SDBA as "street not being a public street", while "public street" is defined as "any street over which the public has a right of way which was usually repaired and maintained by the local authorities before the coming into operation of this Act or which has been transferred to or has become vested in the local authority under this Act or in any manner". If a street becomes vested in the local authority under the SDBA or in any other manner, it is considered as a public street.

Section 12 of SDBA allows for private street which is no less than 40 feet wide to be declared as a public street if requested by several "frontagers" that fulfilled the requirements in s. 12(1)(a) and (b). Section 3 of the SDBA defined "frontager" as:

the owner of premises fronting on, adjoining, abutting on, or (though not actually so fronting, adjoining or abutting) adjacent or accessible to a street or back-lane or where-

⁹⁸ This definition of street is consistent with the meaning of "street" in s. 2 of the Local Government Act 1976.

- (a) the owner of premises by himself or his tenant has the right to use or commonly does use the street or back-lane as a means of access to or drainage from the premises; and
- (b) in the opinion of the local authority, the use or the right to use is for the advantage or benefit of the land.

Therefore, the local authorities may declare a private street as a public street at the request of the frontagers. In addition to s. 12 of the SDBA, s. 13(1) of the SDBA gives a wider power to the local authorities to declare a private street as public street even when there has not been any request. Section 13(1) of the SDBA stipulates the following:

If any street, not being a public street, is levelled, channelled and drained, and either paved, metalled or flagged to the satisfaction of the local authority, it may, whether at the request of the frontagers or otherwise, if it thinks fit, declare that at the expiration of one month from the date thereof the said street shall become private street.

This indicates that the local authorities have a wide discretionary power to take into control any private road. If a street is declared as a public street, the developer and the gated community residents will have no right to deny access to the public. Guardhouses built in gated communities before the 2007 amendments to the STA may be demolished by the local authorities as the road on which the guardhouses are located do not belong to the residents therein.⁹⁹

From the provisions of the law discussed above, it is thus clear that the status of open space in non-strata housing developments is public, to which the public have right of access. The developers and the residents of gated communities indeed have no right to prevent the public from utilising the open spaces for recreational purposes. Hence, the act of gating in gated communities is illegal.

⁹⁹ "Have Laws for Gated Communities", The Star, 18 December 2004.

E. *The Legality of the Act of Installing Barriers in Public Place*

Various efforts are taken by the developers and residents of gated communities to restrict access by the public to their neighbourhoods. A gated community would normally have a guard post positioned at the entrance of the neighbourhood, in addition to the perimeter fencing and barriers. In some gated communities, access to the neighbourhood are blocked by installing boom gates barriers and only residents with the access code or electronic card are allowed to go in.

As the public has a right of entry to gated communities, it is illegal to restrict the public from accessing the area. Since the common area and some of the facilities in gated communities are considered public, it is the duty and responsibility of the local authorities to maintain them. The act of prohibiting access to the gated communities could also cause obstruction and delay to the local authorities in collecting garbage, cleaning the drains and cutting the grass and trees in the area. Difficulties might also arise in a situation where there is an accident in the gated community whereby the gate could cause delay for emergency vehicles and the enforcement agencies.

The statutes that prohibit closure of public place, open space and road to the public are discussed below.

1. *The Street, Drainage and Building Act 1974 ("SDBA")*

An important section under the SDBA is s. 46 which deals with obstruction of public place.

Section 46(1)(a) of SDBA states:

Any person who -

(a) builds, erects, sets up or maintains or permits to be built, erected or set up or maintained any wall, fence, rail, post or any accumulation of any substance, or other obstruction, in any public place; ...

... shall be guilty of causing an obstruction and may be arrested without warrant by any police officer or any officer or employee of the local authority authorised in writing in that behalf by the local authority and taken before a Magistrate's Court and shall be liable on conviction to a fine not exceeding five hundred ringgit, and in the case of a second or subsequent conviction to a fine not exceeding one thousand ringgit.

Section 46 is to be read with s. 48 of the SDBA, where the term "public place" as stated in s. 46 is defined as "any street, park, garden, promenade, fountain, traffic island or circus, playground, river bank, whether above or below high water mark, place of a public resort or any place to which the public has access". In light of the meaning of "street" and "public street" in s. 3 of the SDBA,¹⁰⁰ an access road within a gated community can fall within the definition of "public place" in s. 48 and therefore subject to the rule as stated in s. 46. Therefore, it is clear that unless approved by the local authorities, any fences, guardhouse, post of barriers constructed by the developer on a public place or public street is illegal and can be demolished by the authorities.¹⁰¹ There is also a presumption clause in s. 46(2) of the SDBA that any article or thing deposited on the public place is deemed to be committed by or with the permission of the occupier of such building or area, unless the contrary is proved. The local authorities may order the obstruction to be removed or remove it

¹⁰⁰ As discussed in Part III, para D of this Chapter, where public street is defined to include street which the public has a right of way and street which has become vested in the local authority.

¹⁰¹ Every local authority has the power to administer the affairs of the local authority's area according to s. 8, LGA. The State Authority has the power to issue directions to the local authorities according to s. 9, LGA and by virtue of s. 58(1), TCPA the State Authority make rules to carry out the purpose of the TCPA.

themselves¹⁰² at the expense of the owner.¹⁰³ The prohibition against placing an obstruction on public road is also provided in the Road Transport Act 1987 which is considered and discussed below.

2. *The Road Transport Act 1987 ("RTA")*

As residents of gated communities usually install gates or barriers at the entrance of the housing area, the barriers installed can be considered as obstruction under s. 80 of the RTA. Under s. 80 of the RTA, it is an offence to "place or caused to be placed any road hump or any rope, wire, chain, tackle or similar apparatus across a road or any part thereof in such manner as to be likely to cause danger to persons or damage the vehicles using the road". The word "road" is defined in the RTA to include any public road and any other road to which the public have access, but does not include any private road, bridge, tunnel or anything connected to that road which is maintained and kept by private persons or private bodies.¹⁰⁴ Where a road in a gated community has been declared as public road by the local authority, a person held guilty of an offence under s. 80 of the RTA shall be liable to a fine not exceeding RM2,000 or imprisonment not exceeding six months or both, unless he can prove that he has lawful right to do so and has taken all essential steps to give adequate warning.

Apart from the common barrier such as boom gates, another obstruction that might be constructed in gated communities is speed bumps. Speed bumps are usually built to control

¹⁰² Section 46(3)(a), SDBA.

¹⁰³ Section 46(3)(b), SDBA.

¹⁰⁴ Section 2, RTA.

the traffic speed of vehicles in the gated communities. Speed bump was known to cause accidents to motorists, especially to motorcycle riders as they were sometimes unaware of the existence of such bumps on the roads. For example, a motorcyclist died in an accident after he lost control of his machine when he hit one of the speed bumps in Puchong.¹⁰⁵ Therefore, construction of speed bumps can impose danger to motorists in some cases, although the initial reason to build those bumps was to slow down traffic in an area to provide safety for pedestrians, particularly for children to cross roads. If accidents occur to motorists driving in gated communities, the issue of liability would arise if a legal action is taken by the victim or his family against the gated communities.

Another relevant issue is the responsibility or liability of driver of vehicle driving in a gated community. The word "road" under s. 2 of the RTA clearly refers to "public road" and expressly excludes any private road. If a road inside a gated community is given a private status, the effect is that the provisions of the RTA are not applicable in situations relating to road, particularly in matters relating to driving offences¹⁰⁶ and insurance purposes. It is a common practice for insurance company to exclude liability in cases where accidents occur in a private property. Insurance company might exclude liability in cases of accidents occurring in a fenced or gated area, or if person is involved in any unlawful act.¹⁰⁷

In the context of public roads, section 21(1)(b) of the Police Act 1967 provides that police officers have a duty to keep order on public roads, street and places where the public have access. They also have a duty to prevent obstruction in a case where any road or street is

¹⁰⁵ Singh, Dharmender, "Councillor: Speed Bumps Endanger Folks", *The Star*, 23 February 2006.

¹⁰⁶ Sections 39-55, 67- 88, RTA.

¹⁰⁷ However, the victim will not be excluded from taking a civil action against the wrongdoer.

liable to be obstructed.¹⁰⁸ Consequently, any person who refuses to comply with any reasonable direction given by the police officer under this section shall be guilty of an offence and upon conviction shall be liable to a fine not more than RM200 or imprisonment not more than three months or both.¹⁰⁹ In addition, the person may also be arrested without warrant unless he provides his personal particulars such as his name and address to the police officer and satisfies the police officer that he will duly answer any proceeding that may be taken against him.¹¹⁰ In this sense, the police officer has not just a power but a duty to prevent road obstruction on public roads, including roads in gated communities.

As a conclusion from previous discussion, barriers installed to restrict public access to gated communities can be considered as obstructions. The barriers are in contravention of the SDBA and the RTA and are therefore illegal. As such, the guard post and barriers in gated communities face the risk of being demolished by the local authorities. In addition, due to the illegal closure of public road and public space, the public may bring an action for public nuisance under the law of tort. However, in civil proceeding only a person who has suffered special damage can claim for damages in an action for public nuisance.¹¹¹

F. *The Responsibility of Maintenance of Facilities in Gated Communities*

In a typical DMC agreement, it is common to find a clause which provides that the developer has the duty to provide for maintenance of certain facilities in the gated

¹⁰⁸ Section 21(1)(c) of the Police Act 1967.

¹⁰⁹ Section 21(2) of the Police Act 1967

¹¹⁰ Section 21(3) of the Police Act 1967.

¹¹¹ Norchaya Talib, *Law of Torts in Malaysia*, (Selangor: Sweet & Maxwell Asia, 2nd ed., 2003), p. 301.

community, for example the road and the playground equipments. However, as the road and open space in gated communities can be considered as public space, the local authorities have the duty and the power to maintain the area. Therefore, despite the existence of the DMC agreement signed between the developer and the purchasers, the local authorities still have the duty and the responsibility of maintaining the road and the open space in gated communities.

Section 63 of the LGA states that the local authorities shall have the general control and care of area in which the public have or shall in time have common right. This section stipulates the following:

A local authority shall have the general control and care of all places within the local authority area which have been or shall be at any time set apart and vested in the local authority for the use of the public or to which the public shall at any time have or have acquired a common right.

Section 63 of the LGA therefore provides for the authority of local authorities over public place. As discussed before, the term public place also includes open space as provided in s. 2(1) TCPA. The roads and open space in gated communities have to be surrendered by the developer to the State Authority as a condition for subdivision and re-alienation under the NLC.

The local authorities still have the duty to maintain the area inside a gated community if the road connecting the property is deemed as public street. The definition of "street" under s. 2 of the LGA includes any road, square, footway, passage or service road used or intended to be used as a means of access to two or more holdings. The word "holding" is defined in this section as "any land, with or without buildings thereon, which is held under a separate document of title and in the case of subdivided buildings, the common property

and any parcel thereof and, in the case of Penang and Malacca, "holding" includes messuages, buildings easements and hereditaments of any tenure, whether open or enclosed, whether built on or not, whether public or private, and whether maintained or not under statutory authority." Therefore, a road constructed in a gated community to connect the community with each piece of property in the neighbourhood and the main road can be deemed as "street" within the meaning of the LGA. Thus, the local authorities have the power to provide for the sanitary services of the area and maintain the open spaces in the gated communities as stipulated in ss. 72(1)(a)¹¹² and 101(c)¹¹³ of the LGA.

Although the local authorities have the responsibility to maintain the street and open space in gated communities, s.101(dd) of the LGA allows the local authorities to enter into any contract with any other local authorities or with any person to secure or carry out the duties of which the local authorities are authorised to carry. Hence, the developers can enter into contract with the local authorities to maintain the area in the gated communities. While some developers opted for such agreement, the difficulty of this arrangement on the part of the developer and the residents of gated communities is that the contract has to be renewed periodically by both parties.

In addition, the local authorities and the developer have the option to terminate the agreement signed between them. For example, the developer of Tropicana Golf and Country Resort in Petaling Jaya had decided to hand over the maintenance of the gated

¹¹² The local authority shall the power to establish, maintain and carry out such sanitary services for the removal and destruction of, or otherwise dealing with, rubbish, litter, dead animal and all kinds of refuse and affluent.

¹¹³ The local authority has further powers to construct, maintain, supervise and control parks, gardens, esplanades, recreation ground, playing fields, children's playground, open spaces, holiday sites, swimming pools, stadia, aquaria, gymnasium, community centre and refreshment rooms.

community to the local authority as the residents refused to pay maintenance fee to the developer. As Tropicana Golf and Country Resort was not recognised as a legal gated community by MBPJ, the local authority had consequently requested that the residents adhere to the guidelines imposed on guarded community housing schemes, which the residents had refused to follow.¹¹⁴ The residents were adamant that their housing development be maintained and recognised as a gated community instead of a guarded community and until to date, continue to restrict access of public to the area.

G. *The Legality of Agreement for Rebate in Assessment Tax*

The residents of gated communities have to pay levy for maintenance of the gated communities, such as for security services, garbage collection, cleaning of drains and grass-cutting. These services may be provided by the developer, or the management company appointed by the developer or by the residents. Subsequently, there have been some demands for reduction of the assessment tax levied by the local authorities on gated communities. The basis of these demands is that the local authorities need not maintain the area in gated communities and the privatisation of maintenance in gated communities has therefore reduced the workload of local authorities. For example, Country Heights Holding entered into an agreement with Kajang Municipal Council in 1991 where it was agreed that Country Heights Holding was to retain 70 per cent of the assessment tax for maintaining

¹¹⁴ The residents responded by drafting their own bill called "the Gated and Guarded Communities Bill 2009" which they have passed to their local representative. Refer to Tan, Karr Wei, "Tropicana residents draft bill", *The Star*, 1 July 2009.

and provisioning the area.¹¹⁵ The question is whether there is any provision in the law which allows the local authorities to enter into such agreement in reducing their revenue as provided in s. 39 of the LGA?

Section 39(a) of the LGA states that the revenue of local authorities *shall* include all taxes and rates payable to the local authorities under the LGA or any other written law.¹¹⁶ The rate may be imposed within a local authority area by the local authority, with approval from the State Authority¹¹⁷ and it shall endure for a period of no longer than 12 months.¹¹⁸ The State Authority may only use its discretion to exempt a holding as stated in s. 134 of the LGA from rates of non-pecuniary places used exclusively as public places for religious worship,¹¹⁹ as licensed public burial grounds or crematoria,¹²⁰ for public schools¹²¹ and as public places for charitable purposes or for the purposes of science, literature or the fine arts.¹²² Therefore, other types of holdings cannot be given any exemption by the State Authority. Section 39 of the LGA uses the word *shall* to emphasise that taxes and rates are among the mandatory revenue of a local authority. The effect of s. 39 is the local authorities have no power to give any rebates or exemptions to the property owners in gated communities. If the assessment tax remains unpaid by the registered proprietor after the deadline, the local authorities may proceed to impose certain fee¹²³ on the person, and if he still refuses the local authorities may recover the arrears by issuing a warrant of

¹¹⁵ usjXpress team, 'MPSJ Raids Country Heights for RM9m Assessment Arrears', <http://www.usj.com.my/usjXpress/details.php3?table=usjXpress&ID=167>, last date of access 25 May 2009.

¹¹⁶ Emphasis added.

¹¹⁷ Section 127, LGA.

¹¹⁸ Section 133, LGA.

¹¹⁹ Section 134(a), LGA.

¹²⁰ Section 134(b), LGA.

¹²¹ Section 134(c), LGA.

¹²² Section 134(d), LGA.

¹²³ Section 147(1), LGA.

attachment and seizing any movable property found on the holding¹²⁴ as stipulated in s. 148(1) of the LGA. Further, the local authorities may issue a warrant of attachment and authorise their officer to seize any moveable property belonging to the defaulter or found on the particular holding.¹²⁵ If a defaulter still fails to pay within seven days from the date of the attachment, the local authorities may proceed to sell the property by public auction.¹²⁶ An example of an enforcement of this kind was carried out on the earlier mentioned Country Heights Holdings in year 2001 as the company failed to pay the assessment tax amounting to RM 9,000,000 for their properties to Subang Jaya Municipal Council (which was the local council for the area at that time).¹²⁷ The area was previously under the jurisdiction of Kajang Municipal Council. Although Country Heights Holdings was given a rebate of assessment tax by Kajang Municipal Council in 1991,¹²⁸ Subang Jaya Municipal Council did not make such agreement with Country Heights Holdings.

Thus, although the local authorities are allowed to enter into maintenance agreements with the developers, there is no legal provision which allows the local authorities to give rebates to gated communities. Further, the contract signed for this purpose may be considered as void on the ground that the object of the contract is unlawful as one of the purposes of the contract is to avoid from paying tax. As the effect of the contract signed is indeed to avoid from paying tax under s. 39(a) of the LGA, such contract is void by virtue of s. 24(a)¹²⁹ of the Contracts Act 1950.

¹²⁴ Section 147(2), LGA.

¹²⁵ Section 148(1), LGA.

¹²⁶ Section 149(1), LGA.

¹²⁷ The assessment tax needs to be paid by the registered proprietor of the properties, therefore in this situation Country Heights Holding could still be the registered proprietor of the land in master title.

¹²⁸ usjXpress team, 'MPSJ Raids Country Heights for RM9m Assessment Arrears',

¹²⁹ <http://www.usj.com.my/usjXpress/details.php3?table=usjXpress&ID=167>

The consideration or object of an agreement is unlawful if it is forbidden by a law.

H. *Overall Observation of the Legal Issues Surrounding Gated Communities Prior to the Amendments of the Strata Titles Act 1985 in 2007 by Act A1290*

In light of the above discussed legal problems surrounding gated communities, a purchaser might fall victim to the lacuna in our law which fails to protect his investment in the gated community. Despite the introduction of the DMC to overcome the problem of community living in gated communities, there is no guarantee that the subsequent purchasers of gated communities would agree to sign the DMC and follow all the rules in the gated communities. This may affect the continuation of the scheme in gated communities.

Although some of the provisions in the DMC can take effect as an easement under the NLC, or as equitable easement or restrictive covenant under equity, it cannot be enforced to replace the DMC as a whole as there are some terms in the DMC which are not capable of being registered as easement. These alternatives also require the original owner to retain his ownership in the dominant land before it can take effect as an easement under the NLC, or as an equitable easement or a restrictive covenant in equity.

Although so far the local authorities took no physical action in demolishing the essential features in gated communities such as fences and barriers, it does not mean that no action will be taken in the future. If a legal suit is commenced by the public demanding access to gated communities, the purchasers are likely to lose and suffer the consequences for choosing to buy properties in gated communities. As long as there is no law to protect the owners of such properties, the possibility of being fined by the local authorities always exists.

IV. LEGISLATIVE PROVISIONS AFTER THE 2007 AMENDMENTS TO THE STRATA TITLES ACT 1985 BY ACT A1290

Since the operation of gated communities is rather similar to the operation of strata-titled properties, it has been suggested that instead of issuing individual titles to these landed properties, issuance of strata titles to conventional type of housing should be made available. Consequently, the Strata Titles Act 1985 was amended in 2007, allowing strata titles to be issued to land parcels. As mentioned in Part I of the Chapter, the HDA and the HDR were amended in the same year and the Building and Common Property (Maintenance and Management) Act 2007 was also introduced.

A. *Amendments to the Strata Titles Act 1985 by Act A1290*

The Strata Titles (Amendment) Act 2007¹³⁰ took effect on 12 April 2007.¹³¹ The new amendment was introduced to, *inter alia*, provide for subdivision of land under gated community scheme. Section 6(1) now reads:

Any building two or more storeys on alienated land held as one lot under final title (whether Registry or Land Office title) shall be capable of being subdivided into parcels; and *any land on the same lot shall also be capable of being subdivided into parcels each to be held under a strata title or an accessory parcel.* (Emphasis added.)

A new subsection (1A) was added to s. 6 of the STA to provide for the following:

Any alienated land having two or more buildings held as one lot under final title (whether Registry or Land Office title) shall be capable of being subdivided into land parcels each of which is to be held under a strata title or as an accessory parcel.

¹³⁰ 45 sections were amended and three new sections were introduced together with nine new definitions under s. 4.

¹³¹ Came into operation in the Federal Territory of Kuala Lumpur and in the Federal Territory of Putrajaya through PU(B) 148/2007 and in the states of Johore, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Terengganu through P.U. (B) 149/2007.

With these amendments, the STA now allows for subdivision of land into parcels to be held under strata titles. Besides that, s. 6(1A) of the STA also permits subdivision of alienated land into land parcels, each to be held under strata title without making it obligatory to have buildings in the same lot.¹³² Section 4 of the amended STA defines land parcel as “a unit which is comprised therein a subdivided land on which there is a completed building of not more than four storeys which is held under a strata title.” Instead of having the centre of the floor, wall or ceiling as the common boundary, s. 13(3) of the STA provides that the boundary of a land parcel is determined by its demarcation on the land. The amendments allow for mixed development of high rise building together with conventional type of housing such as bungalows and semi detached houses.

B. *Amendments to the Housing Development (Control and Licensing) Regulations 1989 by P.U. (A) 395/2007*

As mentioned earlier, the HDR which is a regulation made under the HDA was also amended in 2007. Although the amendments to the HDR went beyond Regulation 11(1) of the HDR, the discussion in this part only focuses on said Regulation.

The amendments to the HDR came into operation on 1 December 2007.¹³³ The amended Regulation 11(1) provides as follows:

Every contract of sale for the sale and purchase of a housing accommodation together with the subdivisional portion of land appurtenant thereto shall be in the form prescribed in Schedule G and where the contract of sale is for the sale and purchase of a housing accommodation in a subdivided building, in the form of a parcel of a building or land intended for subdivision into parcels, as the case may be, it shall be in the form prescribed in Schedule H.

¹³² Azimuddin Bahari, *Practical Guide in Subdivision of Land and Building for Issuance of Strata Titles*, (Malaysia: Koperasi Pegawai Pentadbiran dan Pengurusan Tanah Malaysia Berhad, 2007), p. 66.

¹³³ P.U. (A)58/89, came into operation on 1 April 1989. The Minister has the power to make regulations under s. 24(1) of the Housing Development (Control and Licensing) Act 1966.

After the amendments, the HDR also provides for sale and purchase of housing accommodations in the form of land parcel strata titles. It solved the problem of uncertainty in signing the standard SPA for the purchase of housing accommodation located in gated communities. The purchasers of such property may sign the standard SPA in the form of Schedule H as the land parcels in gated communities can now be granted with strata titles.

C. *Introduction of the Building and Common Property (Maintenance and Management) Act 2007*

A new statute known as the Building and Common Property (Maintenance and Management) Act 2007¹³⁴ (hereinafter referred to as the “BCPMMA”) was introduced to provide for maintenance and management of building and common property and to overcome the problems relating to maintenance of buildings and common properties in strata-titled properties in Peninsular Malaysia and the Federal Territory of Labuan.¹³⁵ The BCPMMA aims to ensure uniformity of law and policy relating to buildings, and it is also applicable to developments of gated communities which now come under the purview of the STA.¹³⁶ The BCPMMA also came into operation simultaneously with the Strata Titles (Amendment) Act 2007 on 12 April 2007.¹³⁷

¹³⁴ Act 663.

¹³⁵ Preamble of Act 663.

¹³⁶ Prior to the amendments to the STA, the developers had a control over the maintenance and management of the completed buildings which have yet to be issued with strata titles.

¹³⁷ Date of appointment by the Minister of Housing and Local Government in each state: Johor [P.U. (B) 137/2007], Kedah [P.U. (B) 138/2007], Kelantan [P.U. (B) 139/2007], Melaka [P.U. (B) 140/2007], Negeri Sembilan [P.U. (B) 141/2007], Pahang [P.U. (B) 142/2007], Penang [P.U. (B) 143/2007], Perak [P.U. (B) 144/2007], Perlis [P.U. (B) 145/2007], Terengganu [P.U. (B) 146/2007], Selangor [P.U. (B) 147/2007], Federal Territory of Kuala Lumpur and Federal Territory of Putrajaya [P.U.(B) 152/2007].

The BCPMMA introduced, *inter alia*, the Joint Management Body (hereinafter referred to as the “JMB”), a body comprising the developer and the purchasers of the properties¹³⁸ and the Commissioner of Building (hereinafter known as the “COB”). The JMB set up under s. 4 of the BCPMMA is a body corporate having perpetual succession and a common seal.¹³⁹ It may sue and be sued in its own name.¹⁴⁰ The JMB is responsible to handle matters concerning the maintenance and management of common properties during the initial period.¹⁴¹ The COB appointed under this statute is in charge of the administration of the BCPMMA, including matters regarding the rights and obligations attaching to individual parcels and provisional blocks¹⁴² and matters under regarding management of a subdivided building of the STA.¹⁴³

However, the amendments to the STA had not fully resolved all the difficult issues associated with gated communities. The amendments are not applicable to the previously developed gated communities and conventional housing schemes. There was no provision to allow for the conversion of the existing gated communities into strata schemes. Consequently, gated communities which were developed before the 2007 amendments to the STA remain to be governed by the NLC. As such, the developers of those gated communities would still need to rely on the DMC, and open space in such gated communities is still considered as public property. Therefore the problems highlighted in the earlier discussion in Part III still subsist in relation to these gated communities.

¹³⁸ Section 4, BCPMMA.

¹³⁹ Section 4(2), BCPMMA.

¹⁴⁰ Section 4(3), BCPMMA.

¹⁴¹ Carries the same meaning as in s. 4, STA.

¹⁴² Part VI of the BCPMMA.

¹⁴³ Part VII of the BCPMMA.

V. LEGAL ISSUES SURROUNDING GATED COMMUNITIES AFTER THE 2007 AMENDMENTS TO THE STRATA TITLES ACT 1985 BY ACT A1290

One of the concerns voiced by some parties relating to issuance of strata titles to individual houses in a gated community housing scheme is the possibility of recurrence of difficulties faced by owners of strata-titled parcels in multistorey buildings. Many purchasers of strata titled properties faced problems such as delays in getting their titles, poor maintenance service and unjustifiable excessive charges of maintenance fee. As developers of gated communities now come under the provisions of the STA, the problems relating to the STA might extend to gated communities.

The legal issues after the 2007 amendments to the Strata Titles Act 1985 by Act A1290 are examined in the following order:

- (a) delay in issuance of strata title;
- (b) the competency of the Commissioner of Building and the possibility of conflict of interest where government agencies are involved as developers in strata developments;
- (c) the lack of procedure for appeal if party is unsatisfied with the decision of the Commissioner of Building;
- (d) the ambiguity of whether managing agents are required to be registered under the Valuers, Appraisers and Estate Agents Act 1981;
- (e) the possibility of fraudulent certification in strata developments;
- (f) the non-fulfilment of establishments of the Strata Titles Boards in every state;
- (g) the inadequacy of provisions to accommodate different interest between parties in mixed developments; and

- (h) the impracticability of the requirement of 75 per cent for statutory termination by the purchasers.

The discussions on these legal issues are as follows.

A. *Delay in Issuance of Strata Title*

It is now settled that new developments of landed gated communities can be issued with strata titles. However, there were many complaints by the purchasers of multistorey building that they have yet to receive their strata titles after several years of receiving vacant possession.¹⁴⁴ Non-issuance of strata titles is one of the main problems suffered by purchasers of houses in Malaysia. Since 2001, the National House Buyers Association (hereinafter referred to as the "HBA") has recorded that the main complaint lodged by the purchasers with their association were problems related to strata titles.¹⁴⁵ The longest waiting period recorded for strata title by property owners was 32 years in year 2005.¹⁴⁶ If this problem is not resolved, residents of gated communities might soon find themselves waiting for a long time to collect their strata titles as some of their multistorey property owners counterparts have been suffering for years.

Properties which have yet to be issued with strata titles are generally managed and maintained by the developers who would collect the maintenance fees from the purchasers.

¹⁴⁴ Purchasers are usually advised to lodge a caveat on the master title to prevent the developer from selling or further encumber the land to another person. Halim Abdullah, *Everything the Condominium Developer Should Have Told You, But Didn't*, (Selangor: Pelanduk Publications, 1992), p. 88.

¹⁴⁵ National House Buyers Association, Complaints Statistic 2 – Year 2001, http://www.hba.org.my/HBA/Statistic/complaints_2001.htm, last date of access 3 September 2009.

¹⁴⁶ "Still no strata titles after 32 long years", *The Malay Mail*, 20 May 2005. Also available at <http://www.hba.org.my/news/2005/505/still.htm>. Last date of access 18 March 2009.

During the initial period, the purchasers of the parcels or provisional blocks shall pay to the management corporation any sum determined by the original proprietor¹⁴⁷ as the contributions payable by the proprietors to the management fund of the management corporation.¹⁴⁸ Some developers would excessively charge for the maintenance of the common properties and require the purchasers to pay high maintenance rate, thus turning it into a profitable business for the developer.

It has been said that some developers deliberately refused to pay the annual quit rent¹⁴⁹ so that the application for subdivision of the building into strata titles under s. 9(1)(e) of the STA would not be processed by the local authorities.¹⁵⁰ The HBA identified that among the excuses given by the developers to avoid from paying for the annual quit rent and applying the strata titles for their developments¹⁵¹ were:

- (a) they were appealing against the re-adjustment of the quit rent rate;
- (b) they were contesting the penalty imposed by the Land Office on the arrears to be paid; and
- (c) they claimed that there was no point of making payment before the yearly deadline on May 31 as the funds could be used towards other more urgent purposes.¹⁵²

After the amendments to the STA, s. 8(4) of the STA provides that the developer or the original proprietor have to apply for subdivision of building or land into parcels within:

¹⁴⁷ Most of the time, the original proprietor is the developer.

¹⁴⁸ Section 41A, STA.

¹⁴⁹ Payable every year to the Land Offices by not later than May 31.

¹⁵⁰ National House Buyers Association, "Protection from bullies", *New Straits Times*, 8 September 2007.

¹⁵¹ With regards to quit land.

¹⁵² The National House Buyers Association, "Protection from Bullies", *New Straits Times*, 8 September 2007.

- (a) six months from the date of erection, if the sale of, or agreement to sell, any parcel of the building took place before the building is erected;
- (b) six months from the date of the sale or agreement, if the sale of, or agreement to sell, any parcel of the building took place after the building was erected.

Once the parcels are issued with strata titles, the developer or original proprietor must transfer the titles to the parcel proprietor within twelve months from the date of issuance.¹⁵³ Failure to do so is an offence, where upon conviction the developer or original proprietor shall be liable to a fine of not less than one thousand ringgit and not more than ten thousand ringgit per parcel.¹⁵⁴ However, without strict enforcement of the STA by the authority, the problem relating to delay on the issuance of strata title would continue to cause distress on the purchasers of strata titles properties.

B. *The Competency of the Commissioner of Building and the Possibility of Conflict of Interests where Government Agencies are Involved as Developers in Strata Developments*

One of the most important outcomes of the BCPMMA on gated community purchasers is the introduction of Commissioner of Building (hereinafter referred to as “the COB”). The COB has a wide power and authority over administration of the BCPMMA and part of the STA, including that to:

¹⁵³ Section 40A(1), STA.

¹⁵⁴ Section 40A(3), STA.

- (a) appoint a person to convene the first meeting of the JMB if the developer fails to convene the first meeting within the specified period mentioned in s. 4(1) of the BCPMMA;¹⁵⁵
- (b) appoint a new date for first meeting of JMB if no member entitled to vote turns up or all the members present, for any reason, refuse to be the office bearer of the Joint Management Committee,¹⁵⁶ and also appoint a managing agent to maintain the property;¹⁵⁷
- (c) settle any dispute in respect of Building Maintenance Account;¹⁵⁸
- (d) authorise any purchaser to convene an extraordinary general meeting if the COB is satisfied that a JMB has not been properly constituted;¹⁵⁹
- (e) inspect or appoint an approved company auditor to examine books, records and transactions of a Building Maintenance Account;¹⁶⁰
- (f) appoint a managing agent to maintain and manage a building¹⁶¹ if he is satisfied that the maintenance and management of the building is not carried out satisfactorily by the developer or the JMB;¹⁶²

¹⁵⁵ Section 5(3), BCPMMA.

¹⁵⁶ The Joint Management Committee are elected in accordance to s. 11 of the BCPMMA to perform the duties of the JMB and conduct business on behalf of the JMB, and may for that purpose exercise any of the powers of the JMB.

¹⁵⁷ Section 6(7), BCPMMA.

¹⁵⁸ Section 16(5), BCPMMA.

¹⁵⁹ Section 10(3), BCPMMA.

¹⁶⁰ Section 17(2)(d) and (3), BCPMMA.

¹⁶¹ Section 2, BCPMMA defines "building" as any object erected on the development area, and includes the common property of the building. In the context of gated community housing schemes, it is submitted that the definition of building also includes houses located on land parcels in the gated communities and the common properties.

¹⁶² Section 25(1)(b), BCPMMA.

- (g) enter any building, land or premises to inspect on whether any offence under the BCPMMA has been committed or to execute any work required to be executed by the local authority in respect of which a notice has been issued under this Act and there has been a default in complying with that notice;¹⁶³
- (h) issue a warrant of attachment to a purchaser at the request of the developer or JMB, where an amount of charges payable is in arrears for six months;¹⁶⁴
- (i) compound any offence against the BCPMMA or any regulations made under it by collecting from the person reasonably suspected of having committed the offence a sum of money not exceeding the maximum fine prescribed for that offence;¹⁶⁵
- (j) examine orally any person supposed to be acquainted with the facts and circumstances of the case for the purpose of carrying out an inspection or investigation to determine whether any offence under this Act has been committed;¹⁶⁶
- (k) direct the developer to deposit further sums of money within fourteen days if the deposit put in by the developer is insufficient to rectify any defect to the common property;¹⁶⁷
- (l) appoint a person to convene the first annual general meeting of the management corporation if the original proprietor fails to convene the first annual general

¹⁶³ Section 38(1), BCPMMA. The Commissioner may seize any books, accounts or documents under this Act.

¹⁶⁴ Section 33(1), BCPMMA.

¹⁶⁵ Section 40(1), BCPMMA.

¹⁶⁶ Sections 38 and 39(1), BCPMMA.

¹⁶⁷ Section 31(4), BCPMMA.

meeting within the specified period, on application by the purchasers, a proprietor or chargee of a parcel;¹⁶⁸

- (m) determine the contribution payable or instruct the original proprietor to appoint a registered property manager to recommend the sum payable to the management corporation during the initial period if there is an application for a review by a proprietor who is not satisfy with the amount set by the original proprietor,¹⁶⁹ and
- (n) appoint a managing agent to exercise the powers and discharge the duties and functions of the management corporation upon complaints by a proprietor or any other person or body having a registered interest in a parcel.¹⁷⁰

In the initial stage of the introduction of BCPMMA, only one COB was appointed for the whole of the State of Selangor. On 23 March 2007, *Majlis Negara bagi Kerajaan Tempatan ke-57* decided that the local authorities should appoint their respective Mayor of the city council or President of the municipal or district council of each local authority as the COB for their constituency. Presently there are 77 COBs appointed in local authorities in Malaysia by the respective Secretary of State on behalf of the State Authority.

The issue with appointing the Mayor of the city council or the President of the municipal or district council as the COB is whether such personnel could affectively discharge both roles as the head of the local authority and as a COB. The role of the COB, as shown, is very important and requires considerable commitment on the part of the COB. The Mayor of

¹⁶⁸ Section 41(3), STA.

¹⁶⁹ Section 41A(2), STA.

¹⁷⁰ Section 50(1), STA.

the city council or President of the municipal or district council is already burdened with various duties and it might not be practical to impose the duty as a COB on him.

The State Authority is not unknown for undertaking the role of a developer or a co-developer of in housing developments. For example, the Selangor State Development Corporation or PKNS is currently developing a gated project which consists of 94 semi-detached units in Bangi, Selangor.¹⁷¹ PKNS had also jointly developed Sunway Damansara, a gated community located in Kota Damansara.¹⁷² In case of any future dispute between the developer and the purchasers, the independence of the COB as a government officer may be in doubt.

On the aspect of the burden of work, the tasks could be alleviated by delegation of responsibilities to the officers in the local authorities. Nevertheless this would not solve the issue of impartiality of the COB in making decisions under the BCPMMA and the STA. Therefore it is suggested that an independent body be set up by the Minister of the Ministry of Housing and Local Government to ensure impartiality on the part of the COB in making decision under the relevant statutes.

¹⁷¹ Kaur, Sharen, "PKNS: Niche products for final phase of Bandar Baru Bangi", New StraitsTimes, 18 March 2009.

¹⁷² "Sunway Damansara gaining ground", The Edge, 25 February 2002, p.8. Also accessible at http://www.sunway.com.my/webgroups/gpa_press_newspopup.asp?id=460, last date of access 29 August 2009.

C. *The Lack of Procedure for Appeal If Party Is Unsatisfied With the Decision of the Commissioner of Building*

It is apparent from the preceding discussion that the COB has numerous powers as stipulated in the BCPMMA and the STA. For example, if the purchaser of the strata title development, which includes a purchaser of a property in a gated community, is not satisfied with the amount,¹⁷³ the purchaser can apply to the COB¹⁷⁴ to review the amount.¹⁷⁵ The COB shall determine the amount of contribution to be paid by the purchaser.¹⁷⁶

The BCPMMA states that any party who is dissatisfied with the decision of the COB may appeal to the State Authority, by virtue of s. 41 of the BCPMMA within 14 days after having been notified of the action or decision. However, the right to appeal may be an illusion and “empty” in light of the fact that until today, there is yet any procedure being made as regards to appeal. Further, the BCPMMA had included a provision to oust the power of the court to review the decision on appeal of the State Authority.

1. *Lack of Procedure for Appeal of the BCPMMA*

In fact, according to s. 42(1) of the BCPMMA, the Minister of Housing and Local Government with the concurrence of the State Authority may make such regulation to

¹⁷³ As previously discussed, s. 41A of the STA states that during the initial period the purchasers of the parcels and land parcels in gated communities have the duty to pay to the management corporation any sum determined by the original proprietor as the contributions payable by the proprietors to the management fund of the management corporation. In most situations, the original proprietor is the developer.

¹⁷⁴ As appointed under s. 3, BCPMMA.

¹⁷⁵ Section 41A(2), STA.

¹⁷⁶ Section 41A(3), STA.

ensure the effectiveness of the operation of the BCPMMA. However, as of October 2009, no regulation has been made to help an aggrieved party to make an appeal to the State Authority despite the BCPMMA having been in existence for almost two years. There is no formal procedure which can guide the aggrieved parties to appeal against the decision of the COB. The introduction of a proper regulation will be able to supplement the BCPMMA and to provide guidelines to the relevant parties to ensure an efficient implementation of the BCPMMA.

2. *The Effect of Ouster Clause in the BCPMMA*

In respect of appeal, s. 41 of the BCPMMA stipulates the following:

Any person or body aggrieved by any act or decision of the Commissioner under this Act may, within fourteen days after having been notified of the action and decision, appeal against that action or decision to the State Authority; and the decision of the State Authority shall be final and shall not be questioned in any court.

Section 41 of the BCPMMA provides for the finality of decisions made by the State Authority. The Minister of Housing and Local Government explained that the insertion of the ouster clause in the BCPMMA was to ensure the efficiency of administrative procedure of the BCPMMA.¹⁷⁷ A literal interpretation of the words in s. 41 of the BCPMMA appears to exclude judicial review by the courts as to any decision made by the State Authority on the act or decision of the COB.

¹⁷⁷ Parliamentary Debate, Representative, Eleventh Parliament, Third Session, Third Meeting, 13 December 2006, p. 61 (Ong Ka Ting).

If ouster clause is recognised by the Court, the aggrieved person must accept the decision of the State Authority although the decision might be biased and unfair, and is denied fairness in the form of the check and balance needed from the judiciary.

The main authority on the effect of ouster clause is the decision of the Court of Appeal in the case of *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union*,¹⁷⁸ where the ouster clause was in the form of s. 33B(1) of the Industrial Relations Act 1967 that provides for ouster of judicial review regarding decisions made by the Industrial Court.¹⁷⁹ The Court of Appeal held that the existence of such clause did not exclude judicial review and the court still had the power to review the decision made by the authority. Gopal Sri Ram JCA in delivering the judgment of the court held that:

In my judgment, the true principle may be stated as follows. An inferior tribunal or other decision-making authority, whether exercising a quasi-judicial function or purely an administrative function, has no jurisdiction to commit an error of law. Henceforth, it is no longer of concern whether the error of law is jurisdictional or not. If an inferior tribunal or other public decision-taker does make such an error, then he exceeds his jurisdiction. So too is jurisdiction exceeded, where resort is had to an unfair procedure (see *Raja Abdul Malek Muzaffar Shah bin Raja Shahrizzaman v Setiausaha Suruhanjaya Pasukan Polis* [1995] 1 MLJ 308), or where the decision reached is unreasonable, in the sense that no reasonable tribunal similarly circumstanced would have arrived at the impugned decision.

... Since an inferior tribunal has no jurisdiction to make an error of law, its decisions will not be immunised from judicial review by an ouster clause however widely drafted.

The Federal Court in the cases of *Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia & Anor*¹⁸⁰ and *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna*

¹⁷⁸ [1995] 2 MLJ 317, at p. 342.

¹⁷⁹ Section 33B(1) of the Industrial Relations Act provides that "subject to this Act and the provisions of s. 33A, an award, decision or order of the Court under this Act [including the decision of the Court whether to grant or not to grant an application under s. 33A (1)] shall be final and conclusive, and shall not be challenged, appealed against, reviewed, quashed or called in question in any court."

¹⁸⁰ [1995] 3 MLJ 369. The Federal Court had to determine on the appeal on whether Industrial Court had committed an error of law in ruling that the appellant was a workman within the statutory definition of 'workman' under s. 2 of the Industrial Relations Act 1967. The Federal Court referred to the decision of *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* and held that distinction between errors of law that go to jurisdiction and errors that do not were no longer significant.

*Sungai Gelugor Dengan Tanggungan*¹⁸¹ concurred with the judicial statement as enunciated by the Court of Appeal in *Syarikat Kenderaan Melayu Kelantan Bhd v Transport Workers' Union* on the effect of ouster clause on the power of the court to make judicial review. Therefore, the judiciary still has the power to make a judicial review on any error of law made by the State Authority. It is suggested that s. 41 of the BCPMMA be amended so as not to confuse the layperson into thinking that the judiciary has no power to interfere in cases where wrongful decisions based on error of law have been delivered. Perhaps, as suggested by the some members of the parliament relating to the ouster clause provision during the second reading of the amendments to the HDA, the better approach is to rephrase the ouster clause provision with a clause indicating that the Minister's or the State Authority's decision is subject to judicial review.

D. *The Ambiguity of Whether Managing Agents are required to be registered Under the Valuers, Appraisers and Estate Agents Act 1981*

In some strata-titled developments, the administration and management of the properties are commonly done by a third party commonly referred to as the managing agent or the property manager. The managing agent is usually engaged by the party responsible for maintenance and management of, *inter alia*, the common facilities and the building, which are:

- (a) the developer as the original proprietor of the development, prior to the establishment of the JMB;¹⁸²
- (b) the JMB, during the interim period;¹⁸³ and

¹⁸¹ [1999] 3 MLJ 1. Although the Town and Country Planning Act 1976 does not carry an ouster of jurisdiction clause, the Federal Court was of the view that it was an important issue to consider considering that the leave to appeal was given in this case and the matter was considered by the Court of Appeal.

¹⁸² After the purchasers take vacant possession of the properties as stipulated in Schedule H, HDR.

- (c) the management corporation, after the first annual general meeting of the management corporation.¹⁸⁴

Prior to the 2007 amendments of the STA, “managing agent” was not defined by the STA. After the amendments, the STA now defines a managing agent as “any person or body appointed by the State Authority under subsection 10B(6) or by the COB under section 50”.¹⁸⁵ The BCPMMA defines a “managing agent” as any person appointed by the COB under section 25.¹⁸⁶

Nothing in the STA prevents a management corporation from appointing a managing agent to discharge its duty to maintain and manage the common properties under s. 43(1) of the STA. In addition, s. 8(2)(e) of the BCPMMA gives the JMB the power to appoint an agent to assume the duty to maintain and manage the common properties of the building. The BCPMMA also gives the COB the power to appoint a managing agent to manage and maintain a building¹⁸⁷ which includes the common properties in gated communities. The managing agent appointed by the COB shall enter into an agreement with the developer or

¹⁸³ The interim period is the period from the establishment of the JMB as stated in s.4(1), BCPMMA until the dissolution of the JMB as stated in s.15(1), BCPMMA which is three months after the date of the first meeting of the management corporation of the building.

¹⁸⁴ Under s.41(1), STA, the original proprietor has the duty to convene the first annual general meeting one month after the expiration of the initial period.

¹⁸⁵ Section 4, STA.

¹⁸⁶ Section 25 of the BCPMMA stipulates the following:

(1) Where –

(a) a situation under subsection 6(7) occurs; or
(b) the Commissioner is satisfied, after due inquiry has been carried out by him or a person appointed by him, that the maintenance and management of a building is not carried out satisfactorily by the developer or the Body, as the case may be,
the Commissioner may appoint, by a written notification, one or more persons to act as agent to maintain and manage the building for a period to be specified by the Commissioner.

¹⁸⁷ Part VI of the BCPMMA.

the JMB to carry out the duties and powers of the developer of the JMB under the BCPMMA.¹⁸⁸

Although the role of managing agent is mentioned in the STA and the BCPMMA, both the BCPMMA and the STA are silent on the requirement of managing agents to be registered under the Valuers, Appraisers and Estate Agents Act 1981.¹⁸⁹ This has become an issue as the Board of Valuers, Appraisers and Estate Agents Malaysia issued a public notice that a person or agent appointed by the JMB under s. 8(2)(e) of the BCPMMA cannot be regarded as a managing agent as only the COB has the power to appoint a managing agent under s. 6(7) and s. 25(1) of the BCPMMA.¹⁹⁰ This notice implied that only licensed property and building managers can act as managing agents under the BCPMMA and any unlicensed managing agents appointed by the JMB or the developer would not be recognised as managing agents under the STA and the BCPMMA. Consequently, the unlicensed managing agents cannot exercise the powers and discharge the duties and functions of the JMB and the management corporation as in stated in s. 25(2) of the BCPMMA¹⁹¹ and s. 50(1) of the STA¹⁹² respectively.

Although the BCPMMA and the STA are both silent on the requirement of managing agents to be registered under the Valuers, Appraisers and Estate Agents Act 1981 and the public notice issued by the Board of Valuers, Appraisers and Estate Agents Malaysia has no legal effect, nevertheless the public notice had stirred confusion amongst the public and

¹⁸⁸ Section 25(2), BCPMMA.

¹⁸⁹ Act 242.

¹⁹⁰ "Public Notice", *New Straits Times*, 24 April 2008,

http://www.ppkm.org.my/valuers_act/public_notice_2.htm. Last date of access 21 December 2008.

¹⁹¹ The duties and powers of JMB are provided in s. 8(1) and (2), BCPMMA, respectively.

¹⁹² The duties and powers of the management corporation are provided in s. 43(1) and (2), STA, respectively.

those in the profession alike.¹⁹³ A purchaser of a property in gated community might dispute the authority of the unlicensed managing agent and refuse to pay maintenance fee. In such situation, the administration of the gated community would be problematic. A clarification on this issue is vital to ensure smooth administration of strata-titled properties in Malaysia.

E. *The Possibility of Fraudulent Certification in Strata Developments*

After being given vacant possession by the developer, some purchasers of housing properties found that several common properties or facilities in the gated communities promised by the developer were not provided for, which was contrary to the advertisement by the developer and inconsistent with the strata plan submitted for approval with the local authorities. However, the problem of inconsistency between the strata plan and the factual end product of the strata development was not rectified in the amendments to the STA in 2007. The inconsistency between the strata plan and the end product of the gated community suggests the possibility of fraudulent certification by the officers involved in the certification process.

An example of the scenario involving missing facilities occurred in Saujana Utama, a gated community in Sungai Buloh, Selangor where the residents suffered from the problem of missing facilities as the developer failed to deliver their promise.¹⁹⁴ Despite being promised

¹⁹³ Refer to Usilappan, Mani, "Clearing doubts about management", New Straits Times, 19 June 2009 and Lingam, K.S., "Property Management: Is this enough to protect home owners?", New Straits Times, 24 June 2009.

¹⁹⁴ Harinderan, K., "It's a pie in the sky, say house buyers", New Straits Times, 2 April 2009.

a fully equipped club house and an advanced fibre-optic telecommunications system, the residents were left with a club house which one third of the size promised in the brochure and damaged perimeter fencing. Another example is the Sungai Buloh Country Resort, also located in Sungai Buloh, Selangor where the residents claimed that facilities that were promised by the developer, such as outdoor basketball courts, games room and gala function room were not provided.

The problem of missing facilities in strata developments may be further exacerbated by the introduction of the Certificate of Completion and Compliance (hereinafter referred to as the "CCC") in place of the Certificate of Fitness for Occupation (hereinafter referred to as the "CFO") in the SDBA. Before 2007, the local authorities had the power to issue the CFO under the Street, Drainage and Building Act 1974¹⁹⁵ after the developer fulfilled all the relevant requirements imposed on the housing development. However, there were many problems regarding the issuance of CFO such as:

- (a) delay in certification by technical agencies;
- (b) additional conditions imposed by local authority at the time of CFO application;
- (c) lack of technical officers in local authority to process the CFO;¹⁹⁶
- (d) no clear policy by the government to compel the local authority to inspect, supervise and certify construction works done by the contractor and the developer;
- (e) lack of competent and trained employees;
- (f) inadequate training of the staff of the local authority, technical agency and the MHLG;

¹⁹⁵ Act 133.

¹⁹⁶ "Conference on improving Government's delivery system", *The Sun*, 16 April 2007, http://www.malaysianbar.org.my/news_features/conference_on_improving_governments_delivery_system_13_14_april_2007.html?date=2009-02-01, last date of access 23 March 2009.

- (g) insufficient logistic and fund; and
- (h) inefficient management of the various agencies involved.¹⁹⁷

In order to improve the delivery of such certificate and to lessen the burden of the local authorities, an amendment was made to the SDBA¹⁹⁸ where the issuance of CFO from the local authority is now replaced by the issuance of CCC by the principal submitting person (hereinafter referred to as the "PSP").¹⁹⁹ A PSP is defined in s. 3 of the SDBA as a qualified person who submits building plans to the local authority for approval in accordance with the Act or any by-laws made there under and includes any other qualified person who takes over the duties and responsibilities of or acts for the first mentioned qualified person. A Professional Architect, Professional Engineer or building draughtsman registered under any written law relating to the registration is qualified as a PSP. In line with this amendment, s. 8(8) of the STA was also amended where the present position is that a building is deemed to have been completed on the date it receives its CFO from the local authority or is issued with CCC by the PSP.

The issue is whether it is safe to rely on the independence of self-certification by the PSP compared to the previous practice of having the local authorities to issue the CFO. There is a concern that there might be a conflict of interests between the developers and the PSP as the PSP might succumb to pressure by the developers, thereby invoking a possibility of fraud occurring in such situation either on the part of the developers or the PSP. There is

¹⁹⁷ Nuarrual Hilal Md. Dahlan, "Penipuan Sijil Arkitek dan Jurutera Dalam Kerja-Kerja Pembinaan Projek Perumahan", <http://nuarrualhilal.wordpress.com/category/housing-law/>, last date of access 27 March 2009.

¹⁹⁸ The relevant amendments were made through the Street, Drainage and Buildings (Amendment) Act 2007 (Act A1286) and the Uniform Building by-Laws 1984 (G.N. 5178/85) which took effect on 12 April 2007.

¹⁹⁹ Sections 3 and 19(20), SDBA.

also a potential failure on the part of the purchaser's financial institutions to ensure that the progress report issued by the PSP is legitimate before releasing the progress payment as requested by the developer.²⁰⁰

Despite the above risks, the self-certification by the PSP was introduced mainly to reduce the workload of local authorities and to expedite the process of certification for housing accommodation. Therefore, there is a good reason that the role of the PSP must be retained. It might not be beneficial to do away with the PSP as the problem relating to the delay of the issuance of certification to housing accommodation can be considered as troublesome for the purchasers. However, the risk of fraudulent certification could be reduced by having the local authorities and the financial institution to ensure that the progress report issued by the PSP is legitimate.

F. *The Non-Fulfilment of Establishments of the Strata Titles Boards in Every State*

In 2001, the STA was amended to provide, *inter alia*, for the establishment of the Strata Titles Board in s. 67A of the STA.²⁰¹ The duty and power of the Strata Titles Board (hereinafter referred to as the "STB") is primarily to assist parties in disputes relating the issuance of strata title and other problems faced by the purchasers of strata-titled properties.

Previously, s. 67A of the STA gives the State Authority the power to appoint the President, Deputy Presidents and members of the STB. Although the STA provides for the setting up

²⁰⁰ Nuarrual Hilal Md. Dahlan, *supra* n 254.

²⁰¹ The Strata Titles (Amendment) Act 2001 (Act A1107) took effect on 1 December 2001.

of the STB in all States under Part IXA of the STA, to date in reality Penang was the only State that had set up a STB.²⁰² The reason other States failed to have their own STB was mainly because of the uncertainty of whether it was the duty of the State Authority or the Federal Government to provide for the payment of the remuneration of members of the STB and the cost of setting up the STB.²⁰³ If this continues, similar to other strata developments, the residents of gated communities will also not be able to address their issues to the STB and would have to resort to alternative dispute resolution or to the court.

To address this problem, s. 67A of the STA was amended²⁰⁴ in 2007 to give the Minister of the Housing and Local Government a power of appointment of the members of the STB. Section 67A(3) of the STA stipulates the members of the Board to consist a President and such number of Deputy Presidents and other members who shall be appointed by the Minister and the Minister may consult any relevant State Authority before making such appointment.

Therefore, the power of appointment of STB members is now vested in the Minister and the Federal Government has the financial responsibility in ensuring that the STB is properly set up in every State. Despite this, it is rather disappointing to find that up till today²⁰⁵ no STB has been set up in other States due to technical difficulties.²⁰⁶ Therefore any parties who are in dispute under the STA could not turn to the STB to settle their

²⁰² The Penang STB was set up in May 2002. Faizal bin Kamarudin, "The Management Corporation Under the Strata Titles Act 1985: Issues Surrounding Its Establishment and Operation in the State of Penang", (LLM Dissertation, University of Malaya, Kuala Lumpur, 2006).

²⁰³ Tan, Roger, "Law & Realty: Set up Strata Titles Board, urges Bar Council" *The Sun*, 20 July 2007.

²⁰⁴ Section 36, Strata Titles (Amendment) Act 2007(Act A1290), came into force on 12 April 2007.

²⁰⁵ 15 November 2009.

²⁰⁶ Interview with Miss Cynthia George, Assistant Director, Strata Titles Section, Department of Director General of Lands and Mines (Federal), Ministry of Natural Resources and Environment, Malaysia on 16 November 2009.

disagreement and are forced to go the court; a procedure which is considered as tedious, costly and takes a long time to settle.

G. *The Inadequacy of Provisions to Accommodate Different Interest between Parties in Mixed Developments*

It is possible for gated communities to exist in mixed development where there are multifarious developments or type of buildings. For example, there could be residential, commercial and industrial buildings built on the same lot. The problem is whilst the share units allocation could be determined by the Department of the Director General of Lands and Mines,²⁰⁷ there is nothing in the STA or the BCPMMA to suggest that there should be a separate management corporation (hereinafter known as "the MC") for different types of development in a mixed development.

As raised in the Parliament during the second reading of the Building and Common Property (Maintenance and Management) Bill,²⁰⁸ the purchasers of such properties might have different and conflicting interests. For example, the owner of the residential properties might not agree to have the delivery trucks delivering stock to the commercial area at certain hours of the day, or they might prefer to have stricter measure of security be taken to protect their assets, therefore causing the cost of maintaining their properties to be higher.

²⁰⁷ Section 18, STA; as long as the allocation it is equitable in nature.

²⁰⁸ Parliamentary Debate, Representative, Eleventh Parliament, Third Session, Third Meeting, 13 December 2006, p. 29 (Teresa Kok Suh Sim).

The diversity of interests and values between different developments might cause the administration of MC to be stressful and ineffective as the members of the JMB or the MC might have different interests and opinions. However, there is no provision in the STA which allows for sub-MC to be created.

H. *The Impracticability of the Requirement Of 75 Per Cent for Statutory Termination by the Purchasers*

Previously, s. 8A(1) of the HDA only allowed the developer to terminate the SPA signed with the purchasers.²⁰⁹ Section 8A(1) of the HDA was amended in 2007 to allow for termination of the SPA by purchasers as well.²¹⁰ Purchasers of housing accommodation now have the option of terminating their SPA with the developer if they are, *inter alia*, not happy with the progress of the housing development.

Section 8A of the HDA stipulates the following:

- (1) Notwithstanding anything contained in any agreement, a licensed housing developer or the purchasers may apply to the Minister for approval to terminate all the sale and purchase agreements entered into in respect of a housing development or any phase of a housing development which the housing developer is engaged in, carries on or undertakes or causes to be undertaken if-
 - (a) such application, duly made in accordance with subsection (2), is received by the Minister within six months after the execution of the first sale and purchase agreement in respect of that housing development or that phase of housing development; and
 - (b) at least seventy-five per cent of all the purchasers who have entered into the sale and purchase agreements have agreed with the housing developer in writing to terminate the sale and purchase agreements.

Section 8A(1)(a) requires the termination be applied for within six months after the execution of the first SPA, and s. 8A(1)(b) of the HDA requires that at least 75 per cent of

²⁰⁹ Section 8A(1)(b), HDA.

²¹⁰ Section 9, Housing Development (Control and Licensing) (Amendment) Act 2007 (Act A1289).

all purchasers must have agreed in writing to terminate the SPA. It is however difficult for the purchasers to organise such act as the record of purchasers is kept by the developer and the MHLG might be reluctant to release the details of other purchasers to each other because of privacy issues.²¹¹ As such, the purchasers will suffer difficulty in terminating the SPA under s. 8A of the HDA.

I. *Overall Observation of the Legal Issues after the 2007 Amendments to the Strata Titles Act 1985 by Act A1290*

It appears that although gated communities can now be issued with strata titles under the STA, the amendments to the STA have not solved several problems with the developments of gated communities. The problems associated with the delay in issuance of strata titles could now be extended to include gated community developments which are eligible to be issued with strata titles under the amended STA. The BCPMMA, which was enacted to resolve, *inter alia*, problems relating to maintenance and management of the strata titles properties is also unclear and appointment of the President of the municipal council and the Mayor of the city council was questioned as well. Although the provisions in the HDA and the HDR are supposed to protect the purchasers, further strengthening of protection is still required as evidenced by various problems suffered by the purchasers.

The amendments to the STA also did not solve some issues that have surfaced since before the amendments to the STA in 2007. The status of gated communities built before the amendment to the STA still remain unsolved and in addition to this, there are issue

²¹¹ Parliamentary Debate, Representative, Eleventh Parliament, Third Session, Third Meeting, 12 December 2006, p. 110 (Ong Ka Ting).

pertaining to developments of gated communities both before and after the amendments to the STA. The issues are as follows.

VI. COMMON LEGAL ISSUES RELATING TO GATED COMMUNITIES

In this Part, the writer will discuss legal issues associated with gated communities common to both gated communities developer before and after the amendments to the STA in 2007. The three issues raised here are relating to infringement of privacy from the usage of closed-circuit television system, the legality of the practice of withholding visitor's identification documents and the issue relating to occupiers' liability.

A. *Infringement of Privacy*

Many gated communities in Malaysia are utilising the closed-circuit television system (hereinafter referred to as "CCTV") and other types of electronic monitoring systems as crime prevention and crime apprehension tools. The common arrangement in gated community housing schemes is that the owners of houses in a gated community would enter into a contractual agreement with the security provider as to protect their image and privacy while doing their activities. Among the gated communities which are equipped with CCTV in their neighbourhood are Duta Nusantara in Mont Kiara, Sri Bukit Persekutuan in Kuala Lumpur and Alam Sanctuary in Sri Kembangan.

However, there is a concern that the usage of such system may intrude the privacy of the residents and the visitors. There is a risk that the security guards who are watching the CCTV might not be professional and might leak information to other parties. With modern technology such as the internet, any footage recorded on the CCTV can be circulated within the cyberspace easily.

A person might end up being in the news on national television without even knowing that he was taped. Should he decide to sue and recover this footage, under what law should he use? Is there any right such as the right to be free from surveillance?

Malaysia does not have a legislation to protect the privacy of the citizens at the moment.²¹²

There is no statute on data protection in Malaysia, unlike in the United Kingdom through the Data Protection Act 1998. A draft Data Protection Act was prepared in Malaysia approximately seven years ago but to date not enacted as law yet.²¹³ Until the draft of the Data Protection Act is passed by the Parliament, the people can only rely on the law of tort²¹⁴ to bring an action for an intrusion of their privacy.

²¹² The operators of central monitoring system in Malaysia are governed by the Private Agencies Act 1971 (hereinafter referred to as the "PAA"), where the intention of the act is 'to control the business of private agencies'. Under s. 6 of the PAA, a licensed private agency shall pass any information regarding any seizable offence which is about to be committed or already committed to the police. A visual recording of a computer can be regarded as primary evidence under Explanation 3 of s.62 of the Evidence Act 1950 and is admissible as evidence in court. Nonetheless, the evidence will be challenged in the court if the person accused of committing a crime is a resemblance to a real perpetrator and the visual recording must be relied upon as the sole evidence in prosecuting a person of a crime.

²¹³ As of 31 July 2009.

²¹⁴ Possibly through the law of tort on trespass and defamation and to some extent, for breach of contract.

B. *The Legality of the Practice of Withholding Visitor's Identification Documents*

It was a common practice for security guards of public restricted buildings or premises to ask the visitors to leave a document of identification, such as MyKad or driving license with them before they were allowed to go in. In some advanced gated communities, the security guards would intercom the particular resident to inform him of the presence of a visitor. The vehicle number of the visitor would be noted and the visitor would be provided with either a visitor pass or a visitor's placard to display on his car dashboard. The MyKad or driving license would be retained until the visitor leaves the area.

The Ministry of Internal Affairs issued a circular²¹⁵ in 2007 through the *Surat Pekeliling Agensi Persendirian Bil.2 Tahun 2007* to all security agencies prohibiting them from collecting the visitor's identification card and other identification documents. This circular was also directed to security agencies operating in gated communities. Failure to adhere to this circular would amount to an offence under s.14 of the Private Agencies Act 1971²¹⁶ and the security company is liable upon conviction to a fine not exceeding RM10,000 or imprisonment of not more than three years or both.

Despite the issuance of this circular, there are still gated communities that insist on retaining the identification document of the visitor to the gated communities. The issue here is the legality of the act of retaining those identification cards by the security guards. The

²¹⁵ Issued in accordance with s. 18, PAA.

²¹⁶ Act 27.

relevant statutes here are the National Registration Regulations 1990²¹⁷ and the Road Transport Act 1987.²¹⁸

1. *The National Registration Regulations 1990 ("NRR")*

In Malaysia, all citizens are required to be registered²¹⁹ in accordance with the National Registration Regulations 1990,²²⁰ (hereinafter referred to as the "NRR") before they can be issued with the Malaysian identification card called the MyKad.

Regulation 6 of the NRR 1990 states:

The person to whom an identity card has been issued shall, thereafter and for so long as he remains as registered or re-registered person under these Regulations, *at all times* carry on his person the identity card and subject to the provisions of these Regulations, be responsible for the custody thereof. (Emphasis added.)

It is a legal requirement that all citizens shall carry their MyKad all the time. Their MyKad must remain in their custody, and only authorised officers may inspect the identity of a person as stated in Regulation 7(1) of the NRR:

Any registration officer, a police officer, a custom officer, or any member of the Armed Forces while on sentry or prowler duty, and any other officer or class or description of public officer authorised in writing in that behalf by the Director General, may inspect the identity of any person.

These authorised officers²²¹ may demand to inspect a person's identity and that person shall produce his identity card for inspection.²²² Upon examining the person's identity card, the

²¹⁷ P.U. (A) 472/90.

²¹⁸ Act 333.

²¹⁹ Regulation 3(1), NRR.

²²⁰ P.U. (A) 472/90.

authorised officers must return the identity card to the owner unless they found the identity card to be false or have a reasonable cause to suspect that the particulars in the identity card to be false. In both cases, one of the effects is the authorised officers shall detain or seize the identity card and surrender it to the nearest registration office.

It is an offence for a person other than the officers described in regulation 8A7(1) of the NRR to unreasonably detain any identity card, other than his own. A security guard is not authorised to do so as he is not an officer empowered to do so under regulation 8A7(1) of the NRR, and therefore has no power to either collect or detain other person's identity cards.

Non-compliance of regulation 6 and regulation 7 is an offence under regulation 25(n), and non-compliance of regulation 8A is an offence under regulation 25(fa) of the NRR. Under regulation 25 of the NRR, the person who committed such offences would be liable on conviction to imprisonment for a term not exceeding three years or to a minimum fine of RM3,000 and a maximum fine of RM20,000 or both.

Therefore, if a person fails to carry his MyKad with him all the time, or fails to produce it whenever required by an authorised officer, that person would have committed an offence under the NRR. The same applies to security guards who detain the visitors' identity cards whenever the visitors request to enter a restricted premise.

²²¹ Officers defined by the Protected Areas and Protected Places Act 1959 may also use their discretion to inspect any person entering any protected area or place.

²²² Regulation 7(1A), NRR.

2. *The Road Transport Act 1987 ("RTA")*

The practice of surrendering driving licenses to the security guards in similar manners is also an offence under the RTA. Section 26(1) of the RTA requires that, *inter alia*, only a holder of a driving license is authorised to drive motor vehicle of any class or description on a road. The definition of "road" in s. 2 of the RTA expressly excludes private roads.²²³

Due to this, the RTA is not applicable to roads located in strata-titled schemes as such roads are considered as private roads. Nevertheless, the discussion on the legality of the practice of requesting for identity document by the security guards is still relevant as majority of the properties in gated communities are granted with conventional titles instead of strata titles. In such situation, the status of the roads in the gated communities is considered as public road under the purview of s. 2 of the RTA.

By virtue of s. 58(2) of the RTA, "any person in charge of a motor vehicle on a road shall, on being so required by any police officer, any traffic warden or any road transport officer, produce his driving license for inspection by such officer". Failure to comply with s. 58 of the RTA is an offence under ss. 58(3) and 119(1)(c) of the same Act.²²⁴ Section 58(2) of

²²³ Section 2, RTA defined "road" as

(a) any public road and any other road to which the public has access and includes bridges, tunnels, lay-bys, ferry facilities, interchanges, roundabouts, traffic islands, road dividers, all traffic lanes, acceleration lanes, deceleration lanes, side-tables, median strips, overpasses, underpasses, approaches, entrance and exit ramps, toll plazas, service areas, and other structure and fixtures to fully effect its use; and

(b) for the purpose of section 70 and 85, also includes a road under construction, but shall not include any private road, bridge, tunnel or anything connected to that road which is maintained and kept by private persons or private bodies.

²²⁴ Section 119(2), RTA states that where no special penalty is provided, any person guilty of an offence under the RTA shall be liable for a fine not exceeding RM1,000 or imprisonment for a term not exceeding three months, and in case of a second or subsequent convictions shall be liable to a fine not exceeding RM2,000 or to imprisonment for a term not exceeding six months or to both

the RTA makes no reference to a security guard, thus the driver of a vehicle is not required to produce his driving license upon request by a security guard.

In addition, s. 55 of the RTA states that a person driving a motor vehicle shall stop only when required by a police officer in uniform, a traffic warden in uniform or a road transport officer in uniform. Again, a security guard is not one of the personnel authorised to stop a driver of a vehicle. Therefore, the practice of surrendering identity cards, such as MyKad and driving license, is deemed to be illegal in Malaysia.

C. *Occupiers' Liability*

Malaysia does not have any statute on occupiers' liability, unlike in England where it is governed by the Occupiers' Liability Act 1957 and the Occupiers' Liability Act 1984. In New South Wales, "occupier" is defined as any person in lawful occupation of that lot²²⁵ but no such definition is available in Malaysia's Strata Titles Act 1985. As a result, the law on occupiers' liability in Malaysia is based on common law principles²²⁶ under the law of tort.

An occupiers' liability arises in a situation where the premises are not as safe as it should reasonably be, and the plaintiff suffers injury or damage because of this defective state.²²⁷

An occupier owes a duty of care to all entrants, namely the contractual entrants, invitees,

²²⁵ Section 5(1), New South Wales' Strata Titles Act 1973. Robinson, Leonard, *Strata Titles Units in New South Wales*, (Australia, Butterworths, 4th ed. 1989), p. 102.

²²⁶ Azlinor Sufian, "A Legal Perspective on Gated Communities in Malaysia", (2006) 14 IIUM Law Journal, p. 111.

²²⁷ Norchaya Talib, "Negligence: Occupiers' Liability", *op. cit.*, p. 215.

licensees and trespassers.²²⁸ The standard of care imposed on the occupiers differs between the types of entrance.

The issue here is who is the "occupier" in a gated community? Is it the developer, the property owners or the local authorities? Should they all be jointly liable where negligence had occurred inside the gated community?

Presently, the person deemed to be the "occupier" was explained in the case of *Wheat v Lacon & Co Ltd*,²²⁹ where the House of Lords opined that an occupier is:

... wherever a person has a sufficient degree of control over premises that he ought to realize that any failure on his part to use care may result in injury to a person coming lawfully there, then he is an "occupier" and the person coming lawfully there is his "visitor"; and the "occupier" is under a duty to his "visitor" to use reasonable care. In order to be an "occupier" it is not necessary for a person to have entire control over the premises. He need not have exclusive occupation. Suffice it that he has some degree of control. He may share the control with others. Two or more may be "occupiers". And whenever this happens, each is under a duty to use care towards persons coming lawfully on to the premises, dependent on his degree of control. If each fails in his duty, each is liable to a visitor who is injured in consequence of his failure, but each may have a claim to contribution from the other.²³⁰

Therefore, an occupier is a person who has the immediate supervision and control, and also has the power of permitting or prohibiting the entry of other person.²³¹ It is not essential for the person to be the land owner of that property²³² or is in actual possession of the premises.²³³ The plaintiff and the person deemed to be the occupier need not have a pre-

²²⁸ Norchaya Talib, *id.*, p. 218. Also applicable to social visitor or guest.

²²⁹ [1966] 1 All ER 582.

²³⁰ *Id.*, pp. 593-594.

²³¹ Norchaya Talib, *op. cit.*, p. 216.

²³² *China Insurance Co Ltd v Woh Hup (Pte) Ltd* [1977] 2 MLJ 57, on page 59. The contractor was the party who had the control over the property, therefore rendering him as the occupier of that premises.

²³³ *China Insurance Co Ltd v Woh Hup (Pte) Ltd* [1977] 2 MLJ 57.

contractual relationship in order for the aggrieved party to invoke nuisance as a cause of action.²³⁴

Although it can be concluded that the person who is deemed as the occupier of a house in a gated community is the resident of the house, the position is less clear in other areas inside the gated community. In gated communities developed after the amendments to the STA, it is possible to infer that in normal situations the party who is deemed as the occupier of the common properties is the management corporation. In gated communities which were developed before the amendments to the STA in 2007, although the common areas belong to the State Authority and are under the responsibility of the respective local authority, some developers had entered into agreement with local authorities to maintain the roads and facilities in the gated communities. In this situation, the position is not clear as to who is deemed as the legitimate occupier for the area. The purchasers, the developers and the local authorities might have the liability as the occupier in cases of accidents of negligence occurring in the gated communities but it is not clear to the extent of the liability of each party.

D. Overall Observation of the Common Legal Issues Applicable to Gated Communities

The issue of intrusion of privacy is becoming more prevalent in Malaysia. With the usage of CCTV in gated communities, there is a risk that footage might be leaked to a third party, thus exposing the gated community to a civil suit. In case of a negligence occurring in the

²³⁴ *Sri Inai (Pulau Pinang) Sdn Bhd v Yong Yit Swee* [[2003] 1 MLJ 273, quoted from Norchaya Talib, *supra* n 153, p. 217.

gated community, it is unclear who should be considered as the occupier for the purpose of the legal action. As such, the residents of gated communities would have to take preventative measure to ensure that their gated communities would not be entangled with legal complications. As for the issue of illegal detaining of visitor's identification document, it is clear from the provisions in the NRR that the security guards employed in gated communities do not have the power to withhold a visitor's MyKad. Although the provisions in the RTA are not applicable in private roads, in light of the circular issued by the Ministry of Internal Affairs in the form of *Surat Pekeliling Agensi Persendirian Bil.2 Tahun 2007*, the security guards in gated communities should not withhold the visitors' driving license. Therefore, the residents of gated communities must ensure that the security guards employed by them do not retain a visitor's identification document as it is against the law. This practice often caused inconvenience to the visitors of the gated communities and would create a far more serious problem to the residents of the gated communities, should a legal action be taken against them in the future.

VII. CONCLUSION

Gated communities are surrounded by many legal challenges and impediments that might hamper its primary function to provide peace, security and ultimate enjoyment of properties to the purchasers. It was startling to see how many developers were advertising and promoting gated communities, when the law was not yet in place. Although gated communities built after the amendments to the STA are now recognised by our law, there are still issues associated with gated communities. The legal status of gated communities

built before amendments to the STA in 2007 is still vague since the STA fails to address most legal issues relating to gated communities.

The main legal issue associated with gated communities before the amendments to the STA in 2007 by Act A1290 is the lack of legislation to cater for such developments. Since a portion of land located inside the gated communities would have to be surrendered to the State Authority before it could be subdivided and realienated to the developer, the surrendered portions of the land would commonly be gazetted as open space to be utilised by the public. As such, gated community developers and residents do not have the right to deter the public from entering the gated communities. However, despite the exposure of the issue of the illegality of restricting public access by the media, many gated communities remain adamant in deterring non-residents from entering their neighbourhood due to the reason of security. Nonetheless, the lack of enforcement by our authorities has allowed unlawful gated communities to flourish without any real implication.

Apart from this, the internal arrangement of community living between the residents is presently governed by the DMC which are signed by the initial purchasers of the housing. However, the residents and the developers of the gated community do not have the authority to compel subsequent purchasers to sign similar DMC. Therefore, subsequent purchasers do not have an obligation to obey the rules as set in the DMC. This might threaten the concept of community living in the gated communities.

After the amendments to the STA, the purchasers of gated communities still have to face several legal challenges. Most of the problems are associated with difficulties faced by

strata title property owners and the introduction of the BCPMMA. There have been some concerns over the appointment of the Mayor of the city council or President of the municipal or district council as the COB since these individuals are already being burdened with a lot of administrative duties. The ouster clause in the BCPMMA has also been criticised as misleading since the decision of the Minister of the Housing and Local Government and by the State Authority is still subject to judicial review. There are also common legal issues relating to gated communities. The issues of possible intrusion of privacy, determining the occupier of the common area in gated communities and retaining the visitors' identification document are relevant to both gated communities developed before and after the amendments to the STA.

It appears that there are many legal issues associated with gated communities. Given that gated community developments have been around for several years, the government should find a way to ensure gated community developments can prosper without legal encumbrances as more people are opting for gated communities. The legalisation of gated community developments was an initial step in recognising the developments of gated communities in this country. On the other hand, the government should have studied and taken into consideration the possible social implications associated with gated communities. There are different views, for and against, the establishment of gated communities in Malaysia and in other countries. One view is that gated communities promote social segregation between the rich and the poor and between different races. The differing views are discussed in Chapter Five of the dissertation.

CHAPTER FIVE

OPINIONS FOR AND AGAINST GATED COMMUNITIES

I. INTRODUCTION

Although the various legal issues pertaining to gated communities in Chapter Four are discussed in the local context, there are various studies conducted on a global scale on the effect of gated communities to the society. The studies often pertain to issues relating to urban planning and privatisation, social and financial implication, housing developments, and the effect of gated communities on crime and real property market. Indeed the spread of gated community housing schemes has sparked much global discussion on these topics.

The most successful network that gathers many researchers in this field is the Private Urban Governance & Gated Communities Network (previously known as the Gated Community International Network).¹ Annual international symposiums organised to gather data and input from around the world since 1999, were held at various countries to facilitate the exchange of information between researchers and academics working in this field. Past conferences were held in Hamburg (1999), New York (2001), Mainz (2002), Glasgow (2003), New Orleans (2004), Pretoria (2005), Paris (2007) and Chile (2009). This reflects the high level of attention attracted by gated communities and private urban governance

¹ "Research Network: Private Urban Governance and Gated Communities", <http://www.gated-communities.de/>, last date of access 24 June 2009.

that an international community network was in fact formed to enable researchers to exchange information and views.

Thus far Malaysia has not participated in any of these symposiums. It is hoped that with the present level of awareness of gated community issues, Malaysia will be sending its first delegation soon.

Debates and discussions that took place during those conferences reflected that gated communities are in fact seen as an imminent trend. Malaysia is not the only country which struggles to place gated communities on the nation's spatial and social policy map. Gated communities have created their own micro-societies and micro-territories, with their own private law to be adhered to. While some may think that the existence of gated communities brings benefits, the antagonists do have a lot to say about the negative aspects of gated communities, especially from the social point of view.

This chapter aims to explore the possible social implications of gated community developments in Malaysia through assessing the various opinions put forth for and against gated communities. Most of the studies in other countries were done by researchers associated with the planning, social and urban studies sectors. The experiences of other countries which are more advanced in this development might prove to be very valuable for Malaysia in shaping its local policy regarding gated communities.

This chapter also presents the finding of a survey conducted by the present writer at two gated communities in the Klang Valley. As of today² there is still no official study conducted by the government on the development of gated communities in Malaysia. It is also impossible to know for sure how many gated communities exist in Malaysia since there is no requirement for developers to register their developments as gated or otherwise.

The writer's research shows that at present there are only three available surveys on gated communities by public universities. One survey was conducted by the Department of Estate Management, Faculty of Built Environment, University of Malaya in 2006 on the effect of gated communities on real property market in the Klang Valley. The other survey was conducted by Sazzelina bt Ismail in the fulfilment for the requirement of an undergraduate degree in town and country planning in 2006³ and the last survey was carried out by Norazmin Adibah binti Othman for her masters dissertation in Universiti Teknologi Malaysia⁴ which focused on the planning aspect of gated communities. The present survey by the writer focuses on social background of the residents in gated communities and aims to explore the reasons why they chose to live in gated communities.

The discussion of this chapter is divided into five parts. Part I is the introduction of this chapter. Part II assesses the various opinions supporting gated communities while Part III focuses on the various opinions against gated communities. The discussion in Part IV is

² 24 June 2009.

³ Sazzelina bt Ismail, "Penilaian Kesesuaian Konsep 'Gated Community' Ke Atas Pembangunan 'Landed Property' di Kawasan Majlis Perbandaran Kajang", (Dissertation for Bachelor of Town and Country Planning, MARA University of Technology, Shah Alam, 2006).

⁴ Norazmin Adibah binti Othman, "Kriteria Perancangan Dalam Pembangunan Perumahan Komuniti Berpagar di Kawasan Dewan Bandaraya Kuala Lumpur", (Dissertation for Master of Science in Land Administration and Development, Universiti Teknologi Malaysia, Johor, 2007).

based on the survey conducted by the writer, followed by Part V which concludes the Chapter.

II. OPINIONS SUPPORTING GATED COMMUNITIES

Gated communities are not present for no reason. Developers in Malaysia claimed that this concept received overwhelming response from the public as evidenced by the good sale of such schemes.⁵ They claimed that gated communities offer many plus points to the house buyers, and the boons offered were novelties not being available in previous types of residential developments. The common advantages and characteristics of gated communities are already discussed in Chapter Two of this dissertation,⁶ and as a summary the features of gated communities are the promise of security and privacy, allurements of having one's own private amenities, better services by private maintenance, private membership of clubhouses, architectural consistency, environmentally friendliness of the surrounding area, stronger sense of community and high return of property investment.

Researchers in the field of gated communities have varied opinions with regards to gated community developments and the social, economic and planning repercussions. However, the followings are generally seen as advantages offered by living in gated communities:

- i. gated communities are perceived as safer than their non-gated counterparts;
- ii. gated communities promote strong sense of community;
- iii. gated communities protect the privacy of residents;

⁵ "Legal Conundrum for Gated Communities", (November 2005), *REHDA Bulletin*, p. 1.

⁶ Under the topic of the Common Features of Gated Communities.

- iv. gated communities promote better venue management; and
- v. gated communities improve real estate price.

An individual may have his own subjective reason for choosing to stay in a gated community according to one's need and motivation. However, the writer's research finds that amongst the most popular reason to choose gated communities over conventional housing is the perception of higher safety level. This and other perceived advantages of living in gated communities are further discussed and analysed below.

A. *Gated Communities are Perceived as Safer than Their Non-Gated Counterparts*

In this part, the writer will discuss safety level of living in Malaysia with reference to the crime index in Malaysia, and the insufficient number of policemen in Malaysia which contributes to the existence of gated communities.

Over the last few years, crimes such as snatching and auto theft, which even took place just outside one's house, seemed to be increasing.⁷ The total number of theft in 2006 was 37,128, and the total number of automobile theft was 82,287. The number of housebreaking cases in Kuala Lumpur was 2,299 in 2006 which showed a rise of 19.7 per cent compared to 1,845 cases in 2005. Crimes such as handbag-snatching, burglary, murder and rape were given wide media exposure in an effort to educate the public on how to avoid from becoming victims of these crimes.

⁷ Mak, K.W., "Ensuring crime kept at bay", *The Star*, 9 October 2006.

In 2007, crime index showed that 224,298 crimes occurred, which was an increase of 45 per cent compared to the number of crimes in 2003.⁸ The same year, as many as 11,127 cases of snatch theft were reported and out of this, only 4,339 cases were solved by the police.⁹ There have also been cases where children were kidnapped before being murdered by the perpetrators, one example is the killing of Nurin Jazlin Jazimin who was reported missing on 20 August 2007.

Amongst the States, Selangor had the highest number of petty and violent crimes in year 2007, particularly in Petaling Jaya where there was only one police personnel for every 1154 citizens.¹⁰ Kuala Lumpur also had a high number of crimes with 28,234 crimes occurring in the city in 2006.¹¹ Cases of maids running away from their employers when the employers were not present at home also caused tension among the public as their children might be left alone at home.

The *Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police* found that in the year 2005, 89 per cent of the 1,000 Malaysians interviewed were either “worried” or “extremely worried” regarding crime that occurred in their neighbourhood.¹² In a more recent survey conducted by the Ministry of Home Affairs in 2009, 97 per cent of 6,678 respondents did not feel safe due to the high rate of crime in

⁸ Centre for Public Policy Studies, “CPPS Policy Factsheet: Crime and Safety”, http://cpps.org.my/resource_centre/Crime.pdf, last date of access 24 June 2009.

⁹ Halimah Ali, “Indeks Jenayah Meningkatkan: Ke Arah Negara Yang Tak Selamat”, <http://drhalimahali.wordpress.com/2008/04/04/indeks-jenayah-meningkat-ke-arrah-negara-yang-tak-selamat/>, last date of access 28 April 2009.

¹⁰ Centre for Public Policy Studies, *loc. cit.*

¹¹ United Nations Office on Drugs and Crime, “The 10th United Nations Survey of Crime Trends and Operations of Criminal Justice Systems (10th CTS, 2005-2006)”, <http://www.unodc.org/documents/data-and-analysis/Malaysia.pdf>, last date of access 24 June 2009.

¹² Centre for Public Policy Studies, “Policy Factsheet: Police”, <http://cpps.org.my/downloads/factsheets/Police%20factsheet.pdf>, last date of access 23 June 2009.

Malaysia and more than half of the respondents were either victims of crime or had a relative who had been a victim.¹³ Numerous press reports showed that the general public were concerned about the high crime rate in Malaysia and that security was considered as the top priority for homebuyers.¹⁴ As a result, the idea of living in gated and guarded community could be seen as an effort by the public to minimise the risk of becoming victims of crimes since the neighbourhood would be monitored by security guards. There appears to be a general perception that security matters cannot be left solely in the hands of the police anymore and everyone in the community has to play his part in ensuring his/her own safety.

With the large amount of exposure on criminal activities in the mass media, it is expected that the public are becoming more aware of the many crimes occurring in the country. In addition to media exposure, the number of police in Malaysia has been insufficient as the police force is understaffed, therefore inducing the risk of inadequate protection by the police. In 2004, the police to population ratio in Malaysia was at 1:408,¹⁵ and the accepted Interpol ratio was at 1:250. The ratio was worse in some parts of the cities, such as Kuala Lumpur where there was one policeman for every 649 residents,¹⁶ and in USJ where there was one policeman for every 7,500 residents.¹⁷ It was estimated that in 2008 there were about 93,348 police personnel¹⁸ in Malaysia, thus making the police to population ratio at

¹³ "Poll: Most citizens concerned over high crime rate", *The Star*, 27 July 2009.

¹⁴ Cheah, S. C., "Security top priority for buyers", *The Star*, 29 May 2006.

¹⁵ Kam, Sharon, "Neighbours On Guard", *The Sun*, 20 August 2004.

¹⁶ "One Policeman for 649 People in KL", *The Sun*, 7 July 2004.

¹⁷ "Police to Population Ratio", <http://usj18.nwatch.net.my/article.cfm?id=152>, last date of access 10 October 2004.

¹⁸ Office of the High Commissioner for Human Rights, "Summary Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15 (C) of the Annex to Human Rights Council Resolution 5/1: Malaysia", *Human Rights Council Working Group on the Universal Periodic Review*, 4th session, A/HRC/WG.6/4/MYS/3 (2008) p. 5, based on the joint submission of 56 Non-

1:297¹⁹ compared to the international police ratio of 1:250. The government is targeting to have additional 60,000 police personnel by year 2012²⁰ to ensure effective monitoring of public order and prevention of crime. Although it is the duty of the police to prevent and solve crimes, the cooperation from the public is still very much needed.

It is suggested that gated communities are indeed a response to inadequacy of protection by the police. It is easy for the public to assume the feeling of not getting enough protection from the police. Thus, when developers offered 24-hour security patrol in gated communities as their selling point, it was well-received by those who could afford such properties as they expect to receive maximum protection for their safety. This would provide them with peace of mind at home, and they would not have to worry about their safety anymore.

Therefore, it is not surprising if some of the public feel that there is nothing wrong with living in a secluded, organised community in order to escape from the disorderliness of a larger and potentially unsafe neighbourhood. In this light the purchasers of gated communities are not to be criticised if they feel that they have the right to gate themselves and protect their families and properties from potential criminals. By gating one's neighbourhood, criminals are less likely to become familiar with the area as the entrance is strictly guarded and the exit routes are blocked. In addition to this, such closure can reduce the traffic in the neighbourhood thus making it safer to the children.

Government Organisations in Coalition of Malaysian NGOs in the Universal Periodic Review Process (COMANGO), p. 9.

¹⁹ Based on the latest population index of 27.73 million in 2008.

²⁰ Parliamentary Debate, Representative, Twelveth Parliament, First Session, Third Meeting, 14 October 2008, p. 5 (Dato' Seri Syed Hamid Albar).

Besides gated communities which are built by the developers, a number of gated communities classified by Blakely and Snyder as "security zone communities"²¹ also exist in Malaysia. The gates in these communities were erected by the residents instead of the developers.²² This is known as "guarded community" in Malaysia. Guarded communities are becoming more popular in Malaysia as evidenced by their existence in the Klang Valley. Among guarded communities which exist in the Klang Valley are in TTDI Jaya,²³ Kota Damansara and Bandar Utama.²⁴ This shows that more citizens are becoming more conscious of the security issue in their neighbourhood and decide to become a guarded community.

In the survey carried out by the writer, it was found that majority of the residents chose security as their main priority in purchasing properties in gated communities. This finding supports the finding in surveys carried out in the United States of America and in United Kingdom. A survey carried out by Blakely and Snyder in 1995 in the States revealed that almost 70 per cent of the respondents responded that security was a key factor in choosing to stay in gated communities.²⁵ 70 per cent of the respondents claimed that there were less crimes in their community compared to the surrounding area and 80 per cent of the respondents credited decline of crime rates to the gates in their neighbourhood.²⁶ A study in the United Kingdom by Blandy and Lister also revealed that the most important aspect

²¹ Refer to Chapter Two of the dissertation.

²² Blakely, Edward J. and Snyder, Mary Gail, *Fortress America: Gated Communities in the United States*, (Washington D.C.: Brookings Institution Press, 1997), p. 99.

²³ In Shah Alam, Selangor.

²⁴ In Petaling Jaya, Selangor.

²⁵ Blakely and Snyder, "The Importance of Security in the Choice of a Gated Community", *Fortress America: Gated Communities in the United States*, (Washington D.C.: Brookings Institution Press, 1997), p. 126.

²⁶ Blakely, Edward J. and Snyder, Mary Gail, *op. cit.*, pp. 126-127.

of living in gated communities was “greater security”.²⁷ Landman’s study on the effect of alley-gating and neighbourhood-gating revealed that while closure of neighbourhood did not prevent crime absolutely, the local police and the residents both agreed that crime was reduced significantly in the year and a half that the area has been closed-off.²⁸

Thus far, no concrete study has been carried out in Malaysia to ascertain whether gated communities are safer than conventional housing living. It is thus difficult to ascertain the legitimacy of the claim since crime data is not sorted according to type of housing in which the crimes took place. Despite this, it had been reported by the media that some gated communities had lower crime rate compared to their non-gated counterparts.²⁹ For example, developments such as Aman Suria, Bukit Mayang Mas, Damansara Lagenda and Taman SEA, all located in Petaling Jaya were reported to have lower crime rate compared with housing areas without the facility.³⁰

In this sense, it would appear to be unfair for the authorities to prevent gated communities from being developed as the main drive of their developments is for security and safety of individuals. This freedom to choice should remain in the hands of the public. Sanisah Shafie from the National Physical Plan Division of the Federal Department of Town and Country Planning, Peninsular Malaysia, said that “Malaysia is a free (market) country”, and “having options is part of the beauty and meeting the market demand is a trait of good

²⁷ Blandy, Sarah and Lister, Diane, “Gated Communities: (Ne)Gating Community Development?”, *Conference on Gated Communities: Building Social Division or Safer Communities?*, Glasgow, 18-19 September 2003.

²⁸ Landman, Karina, “Alley-gating and Neighbourhood Gating: Are They Two Sides of the Same Face?”, *Gated Communities: Building Social Division or Safer Communities?*, Glasgow, 18-19 September 2003.

²⁹ Perumal, Elan, et al., “Lower crime rate raises interest in gated townships”, *The Star*, 10 May 2007.

³⁰ *Ibid.*

business”.³¹ It is up to the individuals whether they prefer to live in gated communities or otherwise and this alternative should remain open instead of being shut by the authorities.

In addition, there have also been opinions that living in gated communities do not necessarily drive to the refusal of all social duties as the residents can contribute to the society in many other ways. The residents of gated communities can unite in harmony as a community as there is a possibility that they might share similar traits and values.

B. *Gated Communities Promote Strong Sense of Community*

Landman's studies on gated communities in South Africa indicate that some neighbourhood felt a stronger sense of community.³² This might have been induced by the reduced sense of fear among the society that had encouraged residents to become more involved in their vicinity. Closure can also decrease the risk of road accidents, noise and congestion within the neighbourhood, making it a safe place for children to play with each other.

Some academics believed that when the boundaries are controlled and well-defined, the sense of community in the neighbourhood will increase.³³ Pivo found that as the residents

³¹ Sanisah Shafie, "Sense and Sustainability", *Malaysian Town Plan*, Vol. 1, Issue 3, December 2004, p. 63.

³² Landman, Karina, "Gated Communities and Urban Sustainability: Taking a Closer Look at the Future", in *2nd Southern African Conference on Sustainable Development in the Built Environment*, Pretoria, South Africa, 23-25 August 2000.

³³ Wilson-Doenges, Georgeanna, "An Exploration of Sense of Community and Fear of Crime in Gated Communities", *Environmental and Behaviour*, Vol. 32 No. 5, September 2000 597-611, p. 599.

gather, they would find that they share a lot of common³⁴ qualities which would bond them as neighbours and a community. Survey conducted by Blakely and Snyder³⁵ and by Heisler and Klein found that majority of the respondents of gated communities surveyed described their community feeling as “friendly”.³⁶

From the survey carried out by the writer, majority of the respondents evaluated their relationship with their neighbours as generally “satisfactory”. This appraisal can be considered as good enough as it shows that the neighbours share the same perception towards each other in general with no apparent detestation.

C. *Gated Communities Protect the Privacy of Residents*

As outsiders are prevented from entering the gated communities unnecessarily, it may be said that gated communities can protect the residents from unnecessary and unwanted disturbances from non-residents such as by unsolicited salespersons. The high level of privacy offered by gated communities is welcomed as there have been incidents of various type of scams being carried out in housing area, especially the so-called “scratch-and-win” contest.⁴⁰

³⁴ Lang, Robert E. and Danielsen, Karen A., “Gated Communities in America: Walling Out the World?”, *Housing Policy Debate*, Volume 8, Issue 4, 1997, p. 873.

³⁵ Blakely and Snyder, *op. cit.*, p. 130.

³⁶ Heisler, Doreen and Klein, Warren, *Inside Look at Community Association Homeownership: Facts and Perceptions*, (Alexandria, Community Associations Institute, 1996), quoted by Blakely and Snyder, *ibid.*

⁴⁰ The scratch-and-win contest was banned by the government in December 2007 after a public outcry on this matter and exposures by the media.

Apart from that, incidents of maids running away from their employees may be reduced in gated communities. It is not unknown that such incidents happened frequently in Malaysia. It is believed that the maids may have been influenced by the people involved in illegal syndicates operating in the neighbourhood, who would approach the maid when the employers were at work. Living in gated communities would help to reduce such bad influence on the maids by third parties who are not residents of the neighbourhood.

D. *Gated Communities Promote Better Venue Management*

Gated communities might be able to promote better planning and management of the location area. In *Planning by Commonhold*, co-authored by Chris Webster⁴¹ and Renaud le Goix,⁴² it was suggested that legal enclosure, whether with or without physical enclosure, is efficient to conserve at-risk, congested and depletable resources.⁴³ The authors referred to Central London's road pricing⁴⁴ as an example, where closing of roads and converting the road into "something more like a club with daily membership" managed to reduce congestion, forced the public to assess journeys better and generated "a stream of revenues that could be used for efficient management".⁴⁵ Webster and Goix suggested that private communities have better neighbourhood environments due to professional management and

⁴¹ Professor of Urban Planning, Cardiff University.

⁴² Assistant Professor, Department of Geography, University of Paris.

⁴³ Webster, Chris and Goix, Renaud le, "Planning by Commonhold", *Economic Affairs*, Volume 25, No. 4, December 2005, p. 19.

⁴⁴ Road pricing refers to charges imposed on drivers of vehicles on a particular road or area and is usually used to reduce congestion and generate revenue. An example of road pricing is collection of tolls. Refer to Victoria Transport Policy Institute, "Road Pricing Congestion Pricing, Value Pricing, Toll Roads and HOT Lanes", <http://www.vtpi.org/tdm/tdm35.htm>, last date of access 11 November 2009 and Jonas Eliasson and Mattias Lundberg, "Road pricing in urban areas", <http://www.transport-pricing.net/download/swedishreport.pdf>, last date of access 13 November 2009.

⁴⁵ Webster and Goix, *loc. cit.*

timely re-investment, and are considered as lower risk environment as the people were more aware of their problems and possessed local knowledge to solve them.⁴⁶ The suggested advantages of private communities appeared to benefit only those who live in gated communities and did not take into account the effect of such enclosure to the surrounding area.

However, Webster and Goix found that gated communities have also encouraged better management for the neighbouring communities. In another example, where there was a poor neighbourhood of squatter community in Santiago, Chile. The neighbourhood had been unsuccessfully lobbying for trunk water, sewerage and other utilities for many years.⁴⁷ Their wish only came true when a high income gated community was built next to their neighbourhood. Thus gated communities may bring modernisation to an area which is previously ignored and left out by the authority. In Malaysia, due to the process of urbanisation, gated communities are now also known to be built in the suburban area. For instance, developments such as Setia Eco Park in Shah Alam, Aman Perdana and Glenmarie Cove in Klang were built in the countryside. The remoteness of the location of gated communities does not seem to be discouraging. For that reason, such developments may have the same effect in Malaysia and bring out other developments in the nearby area, although the effect is yet to be proven. On the other hand, developments of gated communities in the suburban areas may also reduce housing opportunity for the poor in the sense that the once less popular locations are now sought-after by the developers and purchasers of gated communities.

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

E. *Gated Communities Improve Real Estate Price*

Many believe that gated communities can improve local environment and assist in urban transformation of an area. It is also believed that property price in a gated community has potential to increase handsomely over the years as it has, *inter alia*, the potential to reduce crime,⁴⁸ making it a profitable property to invest in. A study conducted in St. Louis, United States of America revealed that the benefits associated with gated communities, such as the perception of better security, privacy and restrictions imposed by homeowner association of the gated communities were capitalised into housing price.⁴⁹ The majority of the total premium was attributable to the homogeneous neighbourhood created by design restriction by the homeowner association. Another research in the States was carried out in Los Angeles. The study found that on over short period, some gated communities not only produced a price premium but were also able to generate enough property value to pay off the price of private governance.⁵⁰ In the long term, however, only larger and wealthier gated communities were able to protect and sustain property value. The majority of the average middle class gated communities did not succeed to create a noteworthy price premium and/or maintain significant growth in price.⁵¹

The writer's survey revealed that majority of purchasers made gated communities their permanent residence. It is reasonable to expect houses accommodated by the house owners

⁴⁸ Naude, Beaty, "Can Public Road Closure Reduce Crime Effectively?", *Seminar: Gated Communities*, South Africa, 24 March 2004.

⁴⁹ LaCour-Little, Michael, and Malpezzi, Stephen, "Gated Communities and Property Values", Scientificcommons website,

<http://www.bus.wisc.edu/realestate/pdf/pdf/Private%20Streets%20Paper%20June%202001.pdf>, last date of access 16 July 2009.

⁵⁰ LeGoix, Renaud, "The impact of gated communities on property values: evidences of changes in real estate markets (Los Angeles, 1980-2000)", *International Symposium TCE: Territory, Control and Enclosure*, Pretoria, South Africa, 28 February-3 March 2005.

⁵¹ *Ibid.*

are better taken care of compared to houses resided by tenants. Houses which are in good condition can attract future buyers and might be sold at a better price.

There are also house buyers who purchased the properties for the purpose of investment. If the properties can yield high returns in the form of rentals, then there is a tendency to keep the properties rather than sell them. Properties with high rental returns, for example RM10,000 and above, have attracted expatriate community to the area.⁵²

Gated communities with high monthly rental rate would possibly attract expatriates who believe that life in gated communities is safer than non-gated housing. A gated community comprises bungalows and semi detached houses in Sri Hartamas, Selangor known as Duta Nusantara has a tenancy rate of approximately 70 per cent and was reported to garner high monthly rental rate between RM14,000 and RM20,000 which is about ten per cent yield.⁵³ The bungalows were sold to secondary purchasers for RM4mil to RM4.5 million, compared with the original selling price from RM2.6 million when they were launched in 2002.⁵⁴

Residential such as Tropicana Golf and Country Resort in Petaling Jaya, Valencia in Sungai Buloh and Gita Bayu in Sri Kembangan have also enjoyed increment in their property value after several years. The developer⁵⁵ of Tropicana Golf and Country Resort claimed that capital appreciation of Tropicana properties has increased to 500% from

⁵² Cheng, Thean Lee, "What makes a landed, gated and guarded project?", *The Star*, 18 April 2009, http://www.malaysiapropertynews.com/2009_04_18_archive.html, last date of access 3 May 2009.

⁵³ "Strong interest for upmarket houses", *The Star*, 19 Sept 2005, <http://www.rehdaaselangor.com/P00223.html>, last date of access 23 June 2009.

⁵⁴ *Ibid.*

⁵⁵ Dijaya Corporation Berhad.

RM32 psf to RM150 psf today⁵⁶ while the developer of Valencia asserted that the properties have increased up to 148 per cent since their launch in 2001.⁵⁷

Gita Bayu has also enjoyed the same increment in their property price as evidenced by the following newspaper report:

Bungalow lots were the first to be launched in Bukit Gita Bayu in 1997. They were then priced around RM35 per square feet to RM45 per square feet. All the 205 bungalow lots in phase 1 had been sold and handed over to the buyers. To-date 65 homes have been built and the prices of these lots have escalated to between RM100 per square feet to RM120 per square feet.⁵⁸

Although property value is primarily based on the location of the property and the condition of the property itself,⁵⁹ the rise in property value of housing developments in Gita Bayu, Tropicana Golf and Country Resort and Duta Nusantara can be associated with the fact that these houses are situated in gated communities. It would appear that as long as the houses and the neighbourhood are well taken care of the residents, the property in gated communities is likely to continue to escalate in the future.

III. OPINIONS AGAINST GATED COMMUNITIES

Although gated communities are said to have many advantages compared to conventional residential housing, gated community developments may bring about unhealthy effects and potential conflict. Some of these effects are proven, others are speculations resulted from

⁵⁶ Tropicana Golf and Country Resort, <http://www.tropicanagolf.com/properties/index.html>, last date of access 19 June 2009.

⁵⁷ Wong King Wai, "Oriental appeal of Jade Hills", *The Edge Malaysia*, Issue 747, 23-29 March 2009.

⁵⁸ The Star website, <http://biz.thestar.com.my/news/story.asp?file=/2005/7/25/business/11515895&sec=business>, last date of access 27 May 2005.

⁵⁹ Yeong Ee-Wah, "Getting proper property valuation", *The Sun*, 30 March 2008. Interview with Low Khee Wah, valuation assistant manager of Henry Butcher Malaysia Sdn Bhd.

various studies conducted by academicians, planners and other relevant parties. The strongest opinion against gated communities is that gated communities have negative implications on the society. Other views against gated communities are:

- (i) gated community housing schemes may create a false sense of security;
- (ii) risk of spatial and social segregation;
- (iii) financial and planning implications;
- (iv) risk of displacement of crimes;
- (v) issue of delay in emergency response and difficulty faced by local authorities; and
- (vi) gated communities do not increase sense of community.

The drawbacks of gated communities are explored below.

A. *Gated Communities Create False Sense of Security*

Gated communities are perceived to provide better security measures compared to non-gated communities. The impression is most probably due to the fact the security measures provided by private security agency are deemed to be more effective compared to the general security measures taken by the police. However, the extent of the legitimacy of the assertion that gated communities are secured from crimes had been challenged by some researchers as gated communities are not immune from criminal activities. The writer will discuss the various views associated with the belief of safety in gated communities.

The local news and television programmes such as TV3's 999 and NTV7's *Edisi Siasat*, have created much public awareness on the occurrences of criminal activities in our country. However, it is possible to say that they also generate fear, whether reasonable or not, among the public at the same time. Programme such as 999 has received high ratings in terms of viewers and is one of the most highly watched show on TV3,⁶¹ with 2.5 million viewers in 2007⁶² and 2.3 million viewers in 2008.⁶³ In a poll carried out by the Ministry of Home Affairs in 2009, 36 per cent of the respondents who replied that they did not feel safe in Malaysia due to high crime admitted that they were influenced by news about crime.⁶⁴ Anxiety can possibly generate moral panic and crime policies would probably be implemented as a result of public pressure despite the fact that it was not supported by any criminal research.⁶⁵

The assertion that gated communities are safer than non-gated housing had been challenged in some studies. Academics conducted researches to either prove or disprove the claim that gated communities actually reduce crime rate. One well-known research was done by Blakely and Snyder. In their book, titled *Fortress America*, they asserted that in fact there was no proof to show decrease in actual crimes with gate or barricades.⁷⁶ Others reported only a temporary reduction of crime.⁷⁷ A study in gated communities situated in the high income settlements in Newport Beach, Orange County, California and low income

⁶¹ Media Prima 2004 Operations Review, <http://www.mediaprima.com.my/pdfs/2004/2004Operations.pdf>, last date of access 1 May 2009.

⁶² Media Prima 2007 /Operations Review, http://www.mediaprima.com.my/pdfs/2007/MPB07_operationreview.pdf, last date of access 1 May 2009.

⁶³ "Media Prima 2008 Operations Review", <http://www.mediaprima.com.my/pdfs/2008/operationreview09.pdf>, last date of access 1 May 2009.

⁶⁴ "Poll: Most citizens concerned over high crime rate", *The Star*, 27 July 2009.

⁶⁵ Naude, Beaty, *loc. cit.*

⁷⁶ Blakely, E. J, and Snyder, M. G, *Fortress America*, (1997), reaffirmed by Snyder in "Gated Communities in America: Walling Out the World?", *Planning in the Americas Conference*, Florida, 6-9 November 1997.

⁷⁷ *Ibid.*

settlements in Los Angeles County also proved that there was no significant difference in the per capita crime rate for gated communities as compared to non-gated communities.⁷⁸

Surveys and studies done in some African countries suggested that closure of roads have limited success rate, and possessed very little effect on the overall crime rate at city, regional or national level.⁷⁹ In addition, a study in the United Kingdom showed that substituting non-gated for gated developments did not guarantee a reduction of anxiety for people in gated communities, and they found that there was an increase of fear of outsiders in some residents.⁸⁰

Apart from that, there is a possibility that gated communities are actually attracting the would-be thieves or burglars instead of hindering them, because the perception that the residents of gated communities are more affluent than those who live outside that neighbourhood. In cases like this, gated communities might in fact become a magnet to criminals instead of a restraining factor. Strong-willed thieves would adapt their modus operandi to overcome the level of security set up in gated communities.

In Malaysia, the case of Dato' Soo Lai Sing delivered the illustration that it is probably not safe to purely rely on the gate and security measures as promised by the developer. Dato' Soo Lai Sing apparently thought that he and his family were moving into a haven and

⁷⁸ Wilson-Doenges, Georjeanna, "An Exploration of Sense of Community and Fear of Crime in Gated Communities," *Environmental and Behaviour*, Vol. 32 No. 5, September 2000 pp. 597-611, 606, 607 and 609.

⁷⁹ Naude, Beaty, *loc. cit.*

⁸⁰ Atkinson, Rowland and Flint, John, "Fortress UK? Gated communities, the spatial revolt of the elites and time-space trajectories of segregation", keynote paper for *Conference on Gated Communities: Building Social Division or Safer Communities*, Glasgow, 18-19 September 2003.

heaven neighbourhood when he bought the property in Sierramas, Sungai Buloh in 1999.⁸¹ The property cost higher in this neighbourhood as the selling point was the special security features to be provided within the area. But to the disappointment of Dato' Soo Lai Sing, the developer failed to provide the facilities and his family was robbed. The developer of Sierramas was sued and lost the case, at which this case is presently still at its appellate stage.⁸² Azmel J, the judge who heard the case remarked that:

Because the defendants did not provide such unique security system as promised a robbery in broad daylight was allowed to be committed without being detected or known by the defendants' security guards -- a real mockery which smacks hard on the faces of the defendants.⁸³

Azmel J obviously was not happy with the conduct of developers by not delivering what they had promised. The guards in Sierramas failed to detect the robbery until they were subsequently informed, which proved that 29 security guards were not able to man the whole area due to either the area was too wide for them, or mere failure to perform their job properly. Although it could be alleged that Sierramas was an isolated case, one might also be driven to think that if Sierramas, a highly regarded gated community, failed to protect its residents, developers who are charging less in maintenance fee in other locations might be even less vigilant in doing so.

The attempt to ascertain the effect of gated communities on crimes in local areas proved to be challenging. It is rather difficult to prove or disprove the contention that gated communities contribute to the reduction of crimes in Malaysia, as the police do not separate the police reports according to gated communities and non-gated communities. Although there were claims that gated communities can reduce the number of crime in a

⁸¹ *Dato' Soo Lai Sing v. Kumpulan Sierramas (M) Sdn Bhd & Anor* [2004] 3 MLJ 546.

⁸² As of 27 July 2009.

⁸³ *Id.*, p. 552.

neighbourhood, gated communities are probably useful in preventing the commission of certain crimes and not others. For example, gated communities may be efficient as a crime prevention tool in property crime such as auto theft. However, serious crimes such as homicide and rape are also known to have been committed by persons who are known by the victims or persons who are close to them.⁸⁴ In such cases, the fact that the victims are living in gated communities might not assist them in the situation.

In addition, there is always a risk of having a criminal living in a gated community without the knowledge of other residents. In fact, research shows that criminals often offend quite close to home.⁸⁶ In such a case the residents would have a neighbour who is the very type of person they try to avoid in the first place and their purpose of living in a gated community would be defeated. Criminals might purposely choose to live in a gated community because of the less risk of the area being patrolled by the police. As long as they adhere to the rules being imposed in the gated community, they might be able to avoid suspicion from the community.

There is also a quick assumption that if someone is of equal footing with us in terms of financial standing, then that person might share the same moral values with us. This kind of thinking also leads to the tendency of passing judgment on those with lower economic reputation as possessing lower moral values, which is unhealthy and divisive in nature. Apart from that, since the entrance to gated communities is filtered by the security guards, there is also a tendency to assume that any person who is seen inside the neighbourhood is

⁸⁴ Cubby, Ben, "Behind the Urban Curtains", <http://www.smh.com.au/news/National/Behind-the-urban-curtains/2005/03/03/1109700606439.html>, last date of access 11 February 2006.

⁸⁶ Clarke, Ronald V., "Closing Streets and Alleys to Reduce Crime: Should You Go Down This Road?", http://www.popcenter.org/Response/response-closing_streets.htm last date of access 28 February 2006.

allowed or permitted to be there. Having been checked by the security, such a person is no longer viewed a stranger or a threat⁸⁸ and the residents may be less vigilant in their neighbourhood. For example, a resident in a gated community located in Bandar Saujana Puchong lost his dogs to some thieves while he was resting in his home. Some of his neighbours saw several men were coaxing some dogs into their car, but the neighbours were of the impression that the men were friends of the owner of the dogs.⁸⁹ This was due to the fact that the men were able to get past the security. When one gets too comfortable and too trusting on the security guard and on the level of security in his neighbourhood, there is the risk that he may take the safety of his family and properties for granted.

Gated communities in Malaysia would employ security guards to help patrol the area. Demands for security guards are high in Malaysia and security companies most often rely on low wage foreign workers⁹⁰ due to shortage of workers. The quality of the security guards in such situation may be compromised. Indeed total reliance on security guards for one's safety and security may prove to be unwise as proven by the case of Dato' Soo Lai Seng, where the security guards might be negligent or inadequate. Moreover, there have also been incidences where the security guards committed crimes themselves while on duty, although that did not happen in gated communities.

The risk of imposing total trust on security guard can be demonstrated by the murder of a ten-year old girl, Nurul Huda Abdul Ghani, in Johore. In 2004, Nurul Huda was found

⁸⁸ Discussion reported in Snyder, M. G., "Gated Communities in America: Walling Out the World?", *Planning in the Americas Conference*, Florida, 6-9 November 1997.

⁸⁹ Lim, Chia Ying and Low, Christina, "Thieves target pedigree pets in the Klang Valley", *The Star*, 30 October 2008.

⁹⁰ Unlike some other jurisdictions, for example Canada, where security guards are only employed in exclusive projects due to low supply of guards and high cost of hiring.⁹⁰

raped and murdered in a toilet located at the premise of Tenaga Nasional Berhad. The on-duty security guard employed by Tenaga National Berhad was charged with murdering and raping the victim. His conviction for murder was overturned by the Federal Court on 16 October 2008 but he remained in prison for rape.⁹¹ He was found to have eight previous convictions for robbery, trespassing and house breaking but the security agency which employed him claimed that he lied about his background.⁹² The background checks on the security guard came much too late to save the girl's life. Although security companies are required to verify the background of their employees, there is the risk that the person might lie about his background. As reflected by the above case, a person might even have a previous criminal record and is still employed as a security guard. There is therefore a risk for one to take his safety for granted by leaving matters concerning the security of the neighbourhood entirely with security guards.

Another point to consider is the perception of safety on the streets in gated communities as a result of road closures. Parents tend to become complacent because of this, and they may let their children play without monitoring their whereabouts. There are several potential hazards in this regard, for instance a child might be run over by a neighbour's vehicle, or kidnapped by a paedophile who lives next door. The truth is there have been accidents in gated communities involving vehicles and children. Closer to home, there was an accident in a gated community involving a minor driving his father's BMW where he was killed, and to make it worse the insurance did not cover for accidents happening in such place

⁹¹ "Child rapist escapes gallows", *The Star*, 17 October 2008.

⁹² "SSAM completes Inquiry on Former Employer of Rapist", *New Straits Times*, 18 February 2004.

which was considered as private road at that time.⁹⁵ Although the roads in gated communities are considered as safer for the children compared to conventional neighbourhoods due to the low level of traffic, the residents must not take the safety of their children for granted.

B. *Risk of Spatial and Social Segregation*

A number of gated communities offer low density population. Some of these gated communities have huge built-up areas for the purchasers and this privilege is translated into the cost of the housing. The usage of the vast land and open space within the enclaves are exclusively for the use of the residents only. Non-residents are denied access by the security guards and are not allowed to use the amenities inside, which can be said as illegal and undemocratic in the context of pre-2007 amendments to the Strata Titles Act 1985 since some of the amenities were built on public land.

As some high-end gated communities offer the element of lifestyle associated with the affluent section of the society, the target group for such housing would be those earning high income. For example, upmarket developments are targeting businessmen and top

⁹⁵ Khairiah Thalha, "Project Management, Planning and Design of Strata Title and Gated Communities – A Rich Man's Abode or Future Housing for the Mass?", *Seminar on Land, Strata Title and Gated Community*, Kuala Lumpur, 3 April 2006.

professionals with incomes of more than RM50,000 a month.⁹⁶ In Malaysia, household income can be categorised into three:⁹⁷

- (i) Low income : Below RM2000
- (ii) Middle income: RM2000 and RM3999
- (iii) High income : RM4,000 and more

Middle income group is defined as those with household income between RM2,000 and RM3,999 per month. The target of the developer in this situation indicates that only those in high income group would afford to buy the properties. The data released by the Malaysian Valuation and Property Services Department⁹⁹ revealed that the most popular price for housing in Malaysia is between RM200,001 and RM250,000 per unit.¹⁰⁰ Based on the research conducted by the writer, most houses in gated communities in the Klang Valley cost more than RM300,000¹⁰² with the exception of few developments. This can be considered as an indication that only those in the high income bracket could afford to live in gated communities.

Most low and middle income groups could not afford to buy houses in gated communities as the houses are notably expensive. Most of these citizens would probably resort to transforming their neighbourhood into guarded community instead of buying a property in gated communities. Market driven cities tend to filter people into well defined housing

⁹⁶ "Strong interest for upmarket houses", *The Star*, 19 Sept 2005, <http://www.rehdaaselangor.com/P00223.html>, last date of access 3 May 2009.

⁹⁷ Mid-Term Review of the Ninth Malaysia Plan 2006-2010 Report, p. 63. Also from the email from Azura Arzemi, Distributor & Corridor Development Section, Economic Planning Unit, Prime Minister's Department, 22 July 2009.

⁹⁹ "The numbers speak", *The Star*, 17 May 2008.

¹⁰⁰ The fourth quarter of 2007.

¹⁰² Refer to Table 2.1 in Chapter Two and Table 3.6 in Chapter Three.

market areas by income,¹⁰³ and this may be seen as a discrimination done through the housing cost.¹⁰⁴ The synonymous standard of wealth possessed by these homeowners might cause segregation between those who live inside gated communities and the community outside. More often than not, the community situated outside of gated communities are perceived as those who do not earn as much as the residents in gated communities. This would possibly generate the feeling of prestige and exclusivity for those who live in gated communities.

Children of gated community residents might be prohibited by their parents from playing outside of their neighbourhood, despite having the right and opportunity to use the public amenities located outside. The presence of the gate might deter the children from the surrounding from entering the neighbourhood, but it does not deter the children who live inside gated communities from going outside. Nevertheless, it is generally perceived that the areas outside of gated communities are not safe. This discouragement might prevent the children who live in gated communities from socialising with the children who live outside the fences.

The residents of neighbouring areas are not allowed to enter the gated communities. Naturally, the amenities inside are strictly for residents only. In this situation, it is possible to draw an inference that the residents of gated communities might only socialise amongst themselves. If this happens, the spirit of sharing with other communities is lost and this can be considered as unhealthy for the developments of societies in our multiracial country.

¹⁰³ Webster and Le Goix, *loc. cit.*

¹⁰⁴ Landman, Karina, "Gated Communities and Urban Sustainability: Taking a Closer Look at the Future", 2nd Southern African Conference on Sustainable Development in the Built Environment, Pretoria, South Africa, 23-25 August 2000.

Apart from the risk of socio-income separation, there is also a possibility of separation of races. In Malaysia, the Chinese are generally perceived by other races as being wealthier than other races. This of course is a general perception, until a proper study is done to determine the racial population in gated communities. The mean monthly gross income by ethnic group in Malaysia is shown in Table 5.1.

Table 5.1: Mean Monthly Gross Household Income by Ethnic Group, 2004 and 2007 (RM)

ETHNIC GROUP	2004	2007	AVERAGE ANNUAL GROWTH RATE (%)
Bumiputera	2,711	3,156	5.2
Chinese	4,437	4,853	3.0
Indians	3,456	3,799	3.2
Others	2,312	3,651	15.5
Malaysian	3,249	3,686	4.3

Source: Mid-Term Review of the Ninth Malaysia Plan 2006-2010 Report, p. 58.

Table 5.1 reveals that the Chinese have the highest level of gross monthly income in Malaysia. A study in a neighbouring country, Indonesia, revealed that most gated communities are more often than not populated by the middle class people, mainly the ethnic Chinese.¹¹¹ There is a possibility that the same situation is occurring in Malaysia too as the mean monthly gross household income in Malaysia shows that the Chinese are earning more than other races in Malaysia. This might imply that more Chinese possess a higher level of ability to afford more expensive housing in general, although it does not mean that the Chinese would buy more properties in gated communities.

¹¹¹ Leisch, Harald, "Gated Communities in Indonesia", *Workshop on Gated Communities as a Global Phenomenon*, Hamburg, December 1999.

If more Chinese choose to live in gated communities due to their purchase power ability, there might be a segregation of race following the segregation of income between the gated and non-gated neighbourhoods. Segregation of race in Malaysia has a serious implication on the multiracial development, especially on effect of unity and harmony relationship among different races. Less interaction between people of different racial, religions and financial backgrounds might create suspiciousness and distrust among each other, which might lead to feelings of inequality and might even cause social division and economic instability in a country. It is known that racial segregation as happened in South Africa during the apartheid epoch had instilled much curiosity and tension between the Whites and the Native Africans, and triggered a number of riots in the country, killing many innocent lives.

C. *Financial and Planning Implications*

As gated communities are usually expensive, this Chapter will discuss the implications of gated communities on the economic and the planning aspects. The discussion will first touch on the opinion that as most gated communities could only be afforded by those in high income group, developments of gated communities in rural area would raise the property value of the area which would affect the affordability of the properties in the location on the people in the low income group. The request for tax rebates and the provision of large open space in gated communities will also be discussed. The writer will proceed by discussing the issue of traffic flow or displacement in areas surrounding gated communities.

Aside from being expensive in the first place, the property value of gated communities also manages to increase steadily over the years as their household names become more familiar and established. Residential properties such as in Kajang Country Heights, Kenny Hills, Tropicana Golf and Country Resort, to name a few, would definitely raise some eyebrows.

For example:

- (a) A semi detached house in Kajang Country Heights was advertised for RM788,000,¹¹² while a two-storey bungalow was advertised at RM3.8 millions¹¹³ and several three-storey bungalows were advertised for between RM1.7 millions and RM2.7 millions.¹¹⁴ The land there costs RM6.50 per square foot years ago and was later resold by an owner for RM50 per square foot;¹¹⁵
- (b) Two bungalows in Kenny Hills were advertised to cost RM8.2 million¹¹⁶ and RM8.7 millions¹¹⁷ respectively; and
- (c) A bungalow in Tropicana Golf and Country Resort was priced at RM2.7 millions.¹¹⁸ Capital appreciation of Tropicana properties has shot up 500% from RM32 per square foot to RM150 per square foot.¹¹⁹

¹¹² Malaysia Property & Real Estate, "Country Heights Bukit Impiana 2, Kajang", http://www.property.net.my/Listing/Semi_Detached_House/516.html, last date of access 24 June 2009.

¹¹³ iProperty.com, "Kajang Bungalow for Sale, Country Heights, Selangor", <http://www.iproperty.com.my/property/listing.asp?pid=257394>, last date of access 24 June 2009.

¹¹⁴ Malaysia Most Wanted Property, "Winduri Villas , 3 & 2.5 Storey Bungalow @ Country Heights, Kajang, Selangor", <http://property.malaysiamostwanted.com/projects/winduri-villas-2-5-storey-bungalow>, last date of access 24 June 2009.

¹¹⁵ Berjaya Corporation Berhad, "BLand carves a niche in bungalow lots", <http://www.berjaya.com/051205thestar.htm>, last date of access 24 June 2009.

¹¹⁶ iProperty.com, "Kenny Hills Bungalow for Sale/Rent, Kuala Lumpur", <http://www.iproperty.com.my/property/listing.asp?pid=310710>, last date of access 24 June 2009.

¹¹⁷ Residence123.com, "Bungalow At Tijani 2 North, Kenny Hills", http://www.estate123.com/residence/property_search/details.aspx?key=06052008084300PM2026179531, last date of access 24 June 2009.

¹¹⁸ Residence123.com, "Tropicana Golf & Country Club", http://www.estate123.com/residence/property_search/details.aspx?key=29112008013532PM1550999594, last date of access 24 June 2009.

There is a possibility that many developers of gated communities are tempted to continue building gated communities since they are highly profitable compared to conventional housing, indicated by the price of sale and the collection of maintenance fees by developers. While this hike in property value is good and very much welcomed by many property investors and can improve the country's economy, it also suggests that more people are unable to afford them.

As such, some people would have to resort to finding cheaper houses which are usually located in the rural areas as houses developed in the countryside are less popular due to the location. The developers, however, may exploit the suburban areas to build gated communities. Since gated communities are popular and developers are willing to introduce new elements in order to enhance their values, potential developments of new gated communities might even be extended to the countryside. This would create a competition for resource as land is limited which might result in the reduction in resource for conventional type of housing.

For example, Gary Pivo from University of Washington observed that lands situated near highways and major roads were unpopular because of the noise and other disamenities.¹¹⁹ These lands were being used to primarily build cheap, affordable housing. Developers of gated communities, however, began to build such projects near highways and provide these properties with noise reduction systems. As a result, the initially detested lands were becoming more accepted and trendy, resulting in increased capital value around the areas.

¹¹⁹ Tropicana Golf & Country Resort, "Overview", <http://www.tropicanagolf.com/properties/index.html>, last date of access 24 June 2009.

¹²⁰ Lang, Robert E. and Danielsen, Karen A., "Gated Communities in America: Walling Out the World?", *Housing Policy Debate*, Volume 8, Issue 4, 1997, pp. 874 and 886.

Consequently, there were losses of potential lands for the underprivileged people in those urban regions, forcing them to settle in even less urban areas.

From the economic aspect of gated communities, there is also an increasing demand for tax rebates because of the privatisation of maintenance within gated community's area. In the United States of America,¹²¹ local authorities encourage private communities as a public-private partnership, where the property owners associations assume responsibility for some urban management function. This relationship was however not equally balanced as private communities were considered as "predator of public resources" by trying to offset their financial burden of private management to local municipalities and using public funds and federal grants for their exclusive use.¹²³

Presently, there is no law in Malaysia that allows the local authorities to give tax rebates on gated communities. Increasing demand for tax rebate from gated communities might intensify the pressure on the government. If tax rebate is given, it could affect the local councils financially as tax assessment is one of their main sources of income.

Another factor that can encourage the developments of gated communities is the likelihood that insurance companies reducing premiums for residents in gated communities, but this claim has not been corroborated.¹²⁴

¹²¹ Webster and Le Goix, *loc. cit.*

¹²³ Le Goix, Renaud, "Gated Communities: Sprawl and Social Segregation in Southern California", *Housing Studies*, Vol. 20 n. 2, pp. 323-344.

¹²⁴ Landman, *loc. cit.*

The writer is of the opinion that it is necessary to study the risk of lack of housing and public space as most gated communities offer low density housing developments, especially where it occurs in the urban area. As open spaces are lacking in our cities, gated communities can be considered as an advantage but only for certain groups of people, and fail to benefit the growing number of the general population. It also does not help that some developers provide huge recreational parks and large lakes inside gated communities, and prevent the public from using or enjoying them.

Another impact of gated communities is on the flow of traffic in the area. As gated communities encourage road closures and cul-de-sacs roads in the neighbourhood, there are be less traffic in the area within gated communities. Although the problem might be less apparent in situations where gated communities are situated in secluded areas, it is more obvious when the neighbourhoods are located near various major and busy roads. The people who live outside the gated communities could not use the roads in the gated communities as alternative routes. In such situation, gated communities tend to prevent the local authorities from reaching the optimal traffic flow in the area. Vehicles are forced to take a longer route and increase the travelling distance thus create a negative financial implication on the public as they would have to spend more money on petrol.

D. *Risk of Displacement of Crimes*

Another possible side effect of gating a residential neighbourhood is the risk of displacement of crime to:¹²⁵

- (a) other location (geographical displacement);
- (b) other time (temporal displacement);
- (c) other target (target displacement);
- (d) other method of committing crime (tactical displacement); and
- (e) other type of crime (crime type displacement).

If the practice of gating can prevent criminals from entering gated communities, there is a possible risk that these criminals either omit the whole area or merely shift their focus to the physically vulnerable spot area outside the gated communities. Gated communities might be efficient in reducing crime in the gated communities, but it might not have a significant impact on the number of crime in the surrounding area if there is a displacement of crimes. It might not be possible for the neighbouring residents to observe the actual effect of having gated communities in the area within a short period of time. If the number of crimes increases in the surrounding neighbourhood, the residents might opt to gate themselves up as a precautionary measure to avoid crime in their neighbourhood, causing a ripple effect. If this continues to take place, it could have a negative effect on "urban sustainability in terms of spatial arrangement, as well as effective management and functioning of urban environments".¹²⁷ This ripple effect might eventually cause most of

¹²⁵ Felson, Marcus, and Clarke, Ronald V., "Opportunity Makes the Thief: Practical Theory for Crime Prevention", *Police Research Series: Paper 98*, 1998, p. 25.

¹²⁷ Landman, *loc.cit.*

the neighbourhoods in the area to become guarded communities that restrict non-residents from coming in.

However, a study regarding road enclosures by Felson and Clarke¹²⁸ also revealed that reducing opportunity for crime in certain locations and circumstances can reduce overall volume of crime, instead of displacing the criminal activities. Gating can reduce crime in surrounding area as it discourages offenders from going to the area as a whole. Nonetheless, this might only work in cases where temptation and opportunity is reduced, and benefits of committing the crime outweigh the costs of doing so. The possibility of displacement crime is not unreal.

E. *Issue of Delay in Emergency Response and Difficulty Faced by Local Authorities*

As gated communities are deliberately designed to prevent unwanted vehicles and people from entering the neighbourhood, they might also unintentionally delay emergency vehicles from accessing their neighbourhood. The residents in gated communities might be in the state of emergency which requires assistance from the paramedics, fire brigade or from the police. Precious time might be lost just if the emergency vehicles such as the ambulance, the fire brigade and the police are delayed at the entrance. This is a very crucial issue because during emergencies, seconds count. Lives and properties might be lost just

¹²⁸ *Ibid.*

because of unnecessary struggle that the emergency teams have to put up with in trying to carry out their duty. So far, there is no reported case of such incident in Malaysia.¹³⁰

Another relevant issue is the difficulty faced by the employees of the local authorities in carrying out their duty in gated communities. As some gated communities in Malaysia which were developed before the amendments to the Strata Titles Act in 2007, the facilities and open space inside these communities were surrendered to the State. Thus, the status of the road and amenities inside are considered as public and the local authorities are required to maintain them. However, the employees of local authorities are normally asked to report to the security guards at the entrance of gated communities despite having the rights to enter the residential area.

In South Africa, the local authorities claimed that they were having problems with damage to their service vehicles, waste removal, and reading of water and electricity meters¹³¹ in gated communities. Thus far, no case has been reported on this matter in Malaysia, although officials of local municipalities such as Petaling Jaya City Council (MBPJ) and Kajang Municipal Council (MPKj) did voice out their concern about the difficulties their employees had to endure whenever they had to go inside gated communities to perform their duties, even in cases where the neighbourhood was not legally gated.¹³²

¹³⁰ As at 4 May 2009.

¹³¹ Landman, Karina, "Who Owns the Road? Privatising Public Space in South African Cities through Neighbourhood Enclosures", *Privatisation of Urban Space*, New Orleans, 26-27 February 2004.

¹³² Interview with officers at Petaling Jaya City Council (MBPJ) and Kajang Municipal Council (MPKj).

F. *Gated Communities Do Not Increase Sense of Community*

The word “community” can either allude to the geographic or neighbourhood unit, or focus on social relationship without reference to the location.¹³³ In this discussion, the term community refers to the social networks of people who share interactions. Community is defined as “the condition of sharing, having things in common or being alike in some ways”.¹³⁴ The main concern in this matter with reference to gated communities is the possibility of deterioration of the sense of community in terms of lack of social participation among people.

Landman’s study shows that enclosed neighbourhood has negative impacts on community advancement,¹³⁵ particularly in neighbourhoods which were subsequently gated. Resentments towards gated communities can come from the residents themselves. As some neighbourhoods were not originally gated, residents would have to apply for road closure. There is a possibility that not all residents want their neighbourhood to be turned into a gated community as they would have to spend money on security of the neighbourhood. This might cause conflicts among the residents and might trigger bad relationship between neighbours.

In the cities of Johannesburg and Tshwane in South Africa, residents can apply to have their neighbourhood gated when at least 80 per cent of the residents are in favour of the

¹³³ Fischer, C. S., (et al.) *Networks and Places: Social Relations in the Urban Setting*, (New York: Free Press, 1977), quoted by Wilson-Doenges, Georjeanne, “An Exploration of Sense of Community and Fear of Crime in Gated Communities”, *Environment and Behaviour*, Vol. 32, No. 5, September 2000, p. 598.

¹³⁴ Crowther, Jonathan (ed.), *Oxford Advanced Learner’s Dictionary of Current English*, (Oxford University Press, 5th ed., 1995) at 230.

¹³⁵ Landman, *loc. cit.*

closure.¹³⁶ The position is almost similar in some parts of Malaysia. For instance, in Selangor there must be at least 85 per cent of consent from all residents before a neighbourhood can be turned into a guarded community.¹³⁷ If the closure is not supported by all the residents, the risk of conflict is always present especially when the residents who oppose the closure also refuse to pay for the cost of gating. For example, after the residents of USJ4/1 in Subang Jaya decided to build four back-land gates to prevent burglary, it was found that some residents were not supportive of the idea and refused to pay for the gates. Those who contributed for the back-lane were discontented as those who refused to pay also benefited from the extra security measure.¹³⁸

Another possible scenario is that the residents in gated communities might try to avoid conflict through a third party instead of settling the issue in a face-to-face manner with their neighbour.¹³⁹ Gated communities usually have the presence of security guards and in some cases, employees of the management company who are employed to manage the property. It is not uncommon to ask the security guards or the employee from the management office, for example, to approach their neighbour and make a specific request. Indirect confrontation through a third party might turn into a conflict if the neighbour was not satisfied with this action. This has the possibility to deteriorate the relationship of neighbours. Studies also found that when there are plenty of conflicts within the

¹³⁶ Landman, *op. cit.*, p. 10.

¹³⁷ Guidelines for Developments of Gated Community Scheme (Guarded and Gated Community) in Selangor.

¹³⁸ Cheah, S. C., "Security top priority for buyers", *The Star*, 29 May 2006.

¹³⁹ Lang and Danielsén, *op. cit.*, p. 872.

neighbourhood, the commitment of inhabitants to their homeowners' association is often limited.¹⁴⁰

In view of the many opinions for and against gated communities put forward by academics, it is important for us to determine whether these opinions also apply to Malaysia. Therefore, a survey was carried out by the writer to ascertain the main attraction of gated communities to the residents of such housing.

IV. OVERALL OBSERVATION ON THE OPINIONS FOR AND AGAINST GATED COMMUNITIES

From the previous discussion, it is observed that security is the main drive for gated community developments in Malaysia. As the level of security in Malaysia is still considered as poor by many, it is only fair that the people are allowed to take the matters in their hands by choosing to live in gated communities. Most developers of gated communities are using security as the main marketing drive for their products, and some gated communities offered more than just perimeter fencing and services by security guards, as some houses are also equipped with additional security features such as house alarm, intercom which is directly linked to the guard post and closed-circuit television. The residents are willing to pay in order to ensure that their loved ones are safe. The need to defend one's family and properties can be considered as basic human nature and there is nothing wrong with this noble need. Other factors which contribute to the existence of gated communities are nevertheless important, but the writer is of the opinion that some of

¹⁴⁰ Glasze, Georgss "Some Reflections on the Economic and Political Organisation of Private Neighbourhoods", *Gated Communities: Building Social Division or Safer Communities?*, Glasgow, 18-19 September 2003.

those factors can be considered as incidental to the primary reason for the existence of gated communities, which is security.

However, developments of gated communities also carry negative connotations and images. There have been comments on how gated communities are being utilised by the developers to create a false sense of security to the residents. Some people also think that security could have been used by the rich to justify their needs to be among the elite society as the price of most houses located in gated communities could not be afforded by those with low income. By relying on security as a reason, the rich crowd are given an excuse to seclude themselves in an area full with people of the same standing, thus segregating themselves from the have-nots. It must however be noted that the rich have the stronger need to protect their properties as their houses may become the main target of potential criminals. The existence of gated communities are also detested by some as the residents who chose to gate the neighbourhood are labelled as selfish, due to the reason that they do not allow others to pass through their properties.

The writer is of the opinion that implications, positive or negative, of the existence of gated communities must be examined from two main aspects; security and segregation. Gated communities can be perceived as providing the effective immediate measure to improve the level of safety and security in housing estates in Malaysia. However, if the effect of gated communities in the long run could lead to a more serious issue, namely segregation between the races and between the have and the have-nots, then gated communities should only be allowed as a temporary measure for safety. The effect of segregation of races and incomes indeed can bring about far reaching negative consequences to the nation.

V. SURVEY ON GATED COMMUNITIES

A. *Previous Studies*

As stated earlier, three surveys have been conducted by public universities in Malaysia. A study on the rising trend of gated communities and their effect on real property market in the Klang Valley was conducted by the Department of Estate Management, Faculty of Built Environment, University of Malaya in 2006.¹⁴¹ The partial results obtained from the survey conducted revealed that 80 per cent of the people chose to live in gated communities mainly because of the prestige associated with living in such communities, followed by security with 60 per cent.¹⁴² 70 per cent of the respondents would choose to live in gated communities if they could afford it.¹⁴³ People who chose not to live in gated communities disliked the idea of social exclusion and division between the have and have-nots. Although not much information was revealed, this study is interesting as it showed that the main attraction of living in gated communities in the Klang Valley is prestige, instead of security.

The next survey was conducted by Sazzelina bt Ismail for her undergraduate degree in 2006,¹⁴⁴ also focusing on the planning aspect and the suitability of gated community developments in the local area under the municipality of Kajang Municipal Council. Her

¹⁴¹ Nor Azlina Sulaiman, Yasmin Mohd Adnan, "The Rising Trend of 'Gated Community' in Current Residential Development in Klang Valley", *International Conference on Sustainable Housing 2006*, Penang, Malaysia, 18-19 September 2006.

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

¹⁴⁴ Sazzelina bt Ismail, "Penilaian Kesesuaian Konsep 'Gated Community' Ke Atas Pembangunan 'Landed Property' di Kawasan Majlis Perbandaran Kajang", (Dissertation for Bachelor of Town and Country Planning, MARA University of Technology, Shah Alam, 2006).

survey was carried out in Kajang by distributing 350 sets of questionnaire to the residents of gated communities and residents who lived in the neighbourhood outside the gated communities, in which only 42 of the residents in the gated communities responded. The survey revealed that majority of the residents chose security as the strongest attraction of living in gated communities.

Another survey was conducted through a masters dissertation by Norazmin Adibah binti Othman from Universiti Teknologi Malaysia,¹⁴⁵ with a focus on the planning aspect of gated communities. Norazmin distributed 200 questionnaires randomly in seven gated communities in Kuala Lumpur and received feedback from 89 respondents. Her survey revealed that majority of the respondents chose security as their main priority in choosing to live in gated communities, followed by privacy.¹⁴⁶ The study also showed that 93 per cent of the respondents agreed that gated communities were only for those with high income¹⁴⁷ and 69 per cent agreed that gated communities caused segregation between the rich and the poor segments of the society.¹⁴⁸

The survey conducted by the present writer attempts to ascertain whether gated communities encourage racial and economic segregation and also to determine the main reason why people chose to live in gated communities. The results of this survey can be used to either corroborate or refute the findings of the previous three available surveys. The survey conducted by the writer is also to determine whether gated communities promote

¹⁴⁵ Norazmin Adibah binti Othman, *loc. cit.*

¹⁴⁶ *Id.*, p. 110.

¹⁴⁷ *Id.*, p. 114.

¹⁴⁸ *Id.*, p. 116.

healthy relationship between the neighbours. The findings of this survey are important to establish the potential social implications associated with gated communities.

B. *Purpose of Survey*

One of the primary concerns of having gated communities in Malaysia is the risk of social segregation between different races in our country, followed by the risk of economic segregation between people with dissimilar level of incomes in society. In order to identify the reasons, it is crucial that a study is conducted on this. The survey was done by distributing questionnaires in two gated communities.

C. *The Research Objectives*

The main objectives of conducting this survey are:

- (a) to determine whether gated communities promote racial and economic segregation;
- (b) to identify the main motivations for living in gated communities; and
- (c) to evaluate whether gated communities encourage healthy relationship between neighbours.

D. *Survey Methodology*

The survey required the respondents to tick in the blanks, answer three open-ended questions, four questions with combination of open-ended and close-ended questions, and two questions which require the respondents to rank the motivations of living in gated communities as listed in the questionnaire, accordingly. The sample of the survey is provided in Appendix 1.

E. *The Location and the Respondents*

At first, a large scale survey was planned. Since most gated communities are under the control of the developer of the particular development, permission to conduct a survey had to be obtained from them. However, many developers rejected the idea of having a student conducting a survey at their gated developments on the ground that the residents of the developments involved valued their privacy and refused to be disturbed.

After eleven months and fifteen rejections, a gated community in Puchong, Selangor agreed to give permission for the survey. The gated community was not approached through the developer, but through its strong-knit residents association. The residents association required the writer not to reveal the name of their housing development. The questionnaires were distributed on foot by the writer by putting them into the letterbox of each resident. The neighbourhood consists of 450 terrace houses and has a guard post on the entrance. This location is identified as Location 1 in this study. The residents were asked to return the

questionnaire to the guard post in a week's time. The questionnaires were later collected from the guard post. Only 25 questionnaires (5.5 per cent) were returned. The estimated market price of the properties in the area was RM450,000.

Four months later, one developer agreed to allow a study to be conducted on their gated residence in Sri Kembangan, Selangor. This location is identified in this study as Location 2. The neighbourhood had a guard post stationed at the entrance. The properties inside the gated community were sold as vacant land, and the land owners themselves would erect their own house on it. All the houses there were bungalows or detached houses and the price range differed according to the size of the land. The bungalow lots were offered at a price between RM45 per square foot to RM58 per square foot. The developer for this development had also requested that the name of the housing development be kept anonymous. The developer identified houses with occupants and gave the relevant addresses of the houses in the gated community. At the time, the developer identified that there were only 18 bungalows with residents in the community. 18 sets of questionnaires were then mailed to the residents, together with self-addressed envelope and stamp. Out of the 18, only six questionnaires (33.3 per cent) were returned by the residents.

F. *Survey Limitation*

Due to time constraint, the survey could only be carried out in two gated communities. The research time allocated for this study was limited and the developers were reluctant to allow the writer to conduct survey in their housing developments. Some developers

asserted that such survey would disrupt the privacy of their residents. After more than a year, the attempt to obtain participation from more residents of gated communities had to end to allow the writer to process the data collected from the two gated communities as extension of the period would not ensure participation from more developers in the survey.

The next limitation was the poor response received from the residents of the gated communities, especially from the residents in Location 1 in Puchong as only 25 residents out of 450 had responded to the survey. The immediate reason for the low response rate is not clear. However, this problem seems common for other researches involving questionnaire. It is likely to be attributed to the attitude of some populace who are not very keen in taking part in research.

Since the level of response from the residents was low, the data collected on the background of the residents might not be conclusive. The low response rate, however, does not jeopardise the findings of the survey in determining the motivations for living in gated communities as the feedback received from the respondents in both locations was consistent. These findings can be used to support the results of the previous surveys conducted in Malaysia and prove that security is the main attraction of purchasing property in gated communities.

G. Findings of Survey

The findings of the survey are as follows.

1. Background of Respondents: Age, Household Size, Type of Ownership.

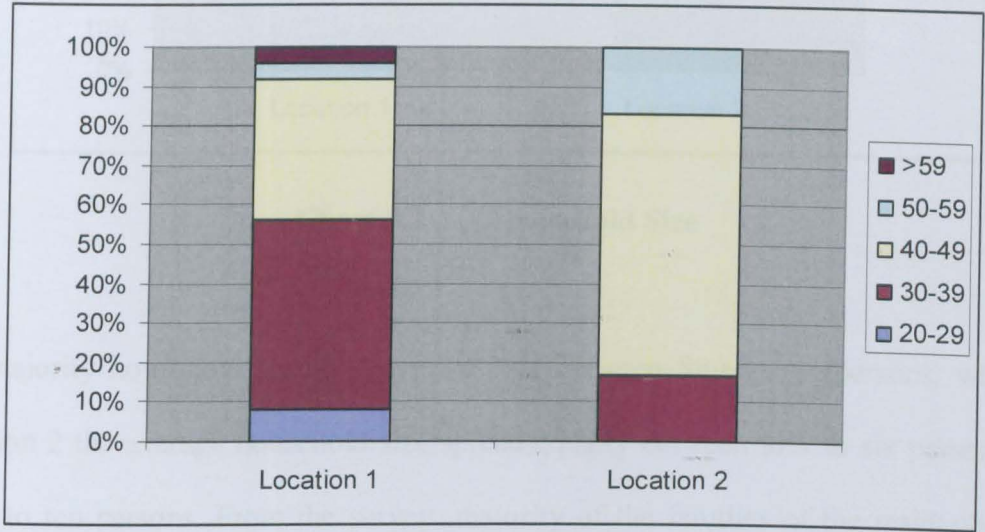


Chart 5.1: Age Group of Respondents

Majority of the respondents in Location 1 in Puchong are from the age of 30-39 years old with 48 per cent, while the respondents in Location 2 in Sri Kembangan consisted mainly of people in the age group of 40-49. This finding might be due to the price of the properties in Location 2 was higher compared to Location 1, and most people who can afford such properties are the people who are older and have established themselves in their careers.

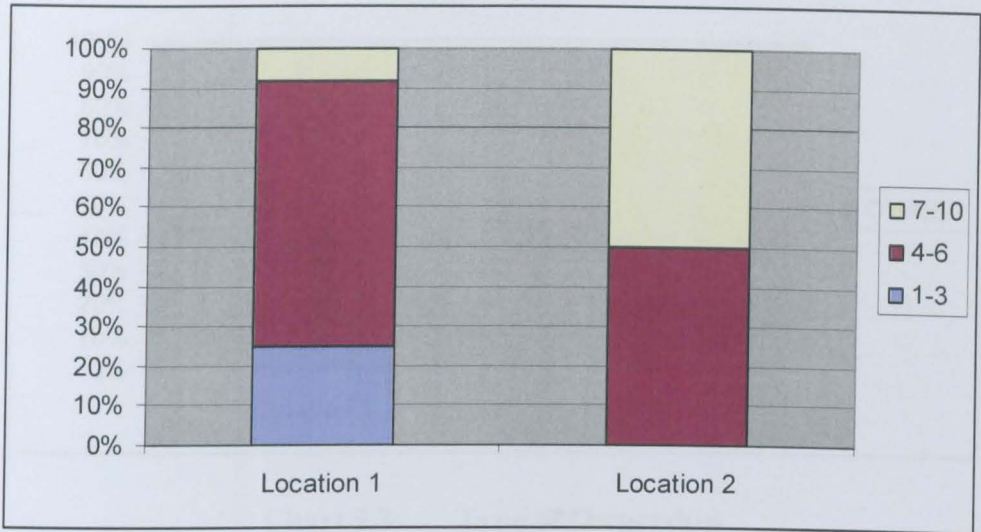


Chart 5.2: Household Size

The majority household size in Location 1 is between four to six persons, while in Location 2 the average household size spread equally between four to six persons and seven to ten persons. From the survey, majority of the families of the residents were from medium to large sized families. However, the data was not enough to provide conclusive answer to draw to a general conclusion that gated communities consist of large sized families.



Chart 5.3: Type of Ownership

All respondents in both gated communities are owners of their properties and none of them was tenant. Considering that gated communities are perceived to cost higher than their non-gated counterparts, people would probably buy properties in a gated community as a place of residence instead of renting them out. Since gated community properties require the property owners to pay a maintenance fee, it might not be profitable for the owners of properties in some gated communities to offer the houses for tenancy. Most of the respondents in Location 2 did not intention to sell their property later. Majority of the respondents in Location 1 were unsure about the idea of reselling their houses although 24 per cent of the respondents indicated intention to resell their properties within the next ten years.

2. *Racial Background*

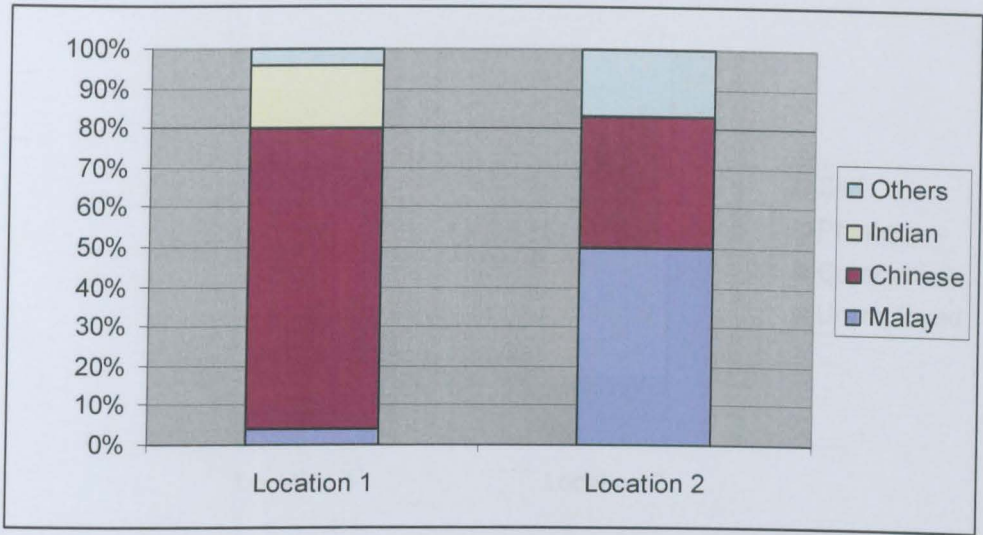


Chart 5.4: Racial Composition

Majority of the respondents living in Location 1 were Chinese with 76 per cent, compared to only 16 per cent of Indians and four per cent of Malays. 50 per cent of respondents in Location 2 were Malays and 33.3 per cent of them were Chinese. The remaining 16.7 per cent was “other” race which was not specified by the respondents.

From the result, it seems that no one race was more dominant than the others. This observation is inconclusive due to the fact that only a small percentage of respondents responded to this survey. Since the survey only consisted of two small gated communities with limited responses, the results might not reflect the true racial composition of both areas.

3. Financial Background

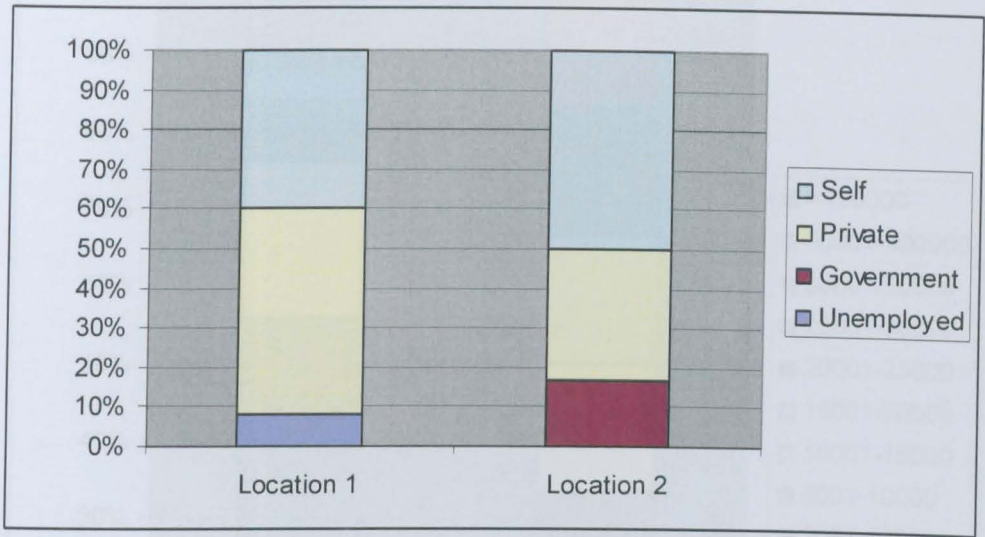


Chart 5.5: Type of Employment

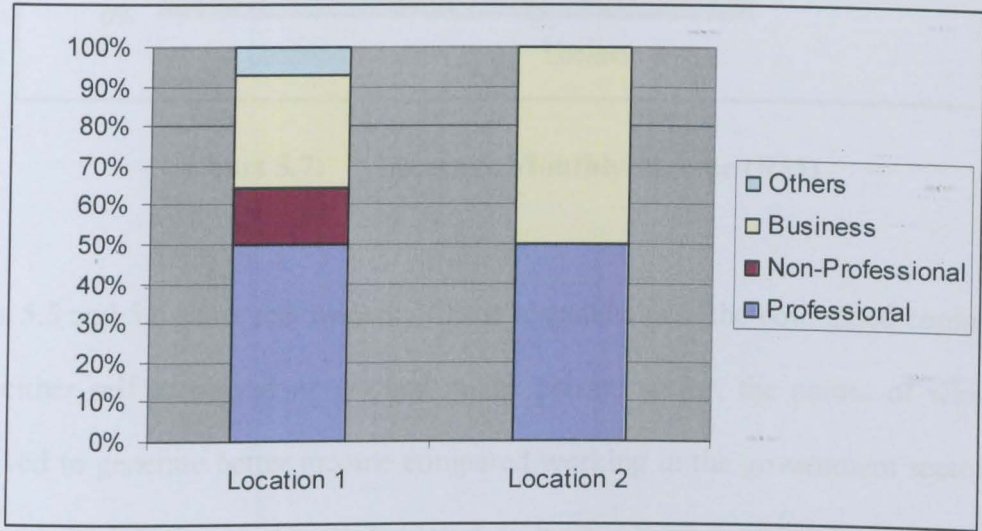


Chart 5.6: Background of Employment



Chart 5.7: Average Monthly Income (RM)

Charts 5.5 and 5.6 show that majority of the respondents in the both gated communities were either self employed or worked in the private sector, the nature of which was perceived to generate better income compared working in the government sector. Most of the respondents were also professional or have a business of their own. The only respondent who was working in the public sector was actually a professor in a local public university, where the income was considered higher compared to other sectors of the public sector.

Chart 5.7 reveals that the monthly income for majority of the respondents in Location 1 was between RM5,001 and RM10,000, while in the income groups in Location 2 were

equally distributed between RM2,001 to RM30,000. Therefore, it is possible to infer that most of the respondents in both communities were from the middle to high income groups. Considering that the properties in Location 1 consisted of terrace houses and were considerably less expensive from the properties in Location 2, it is surprising to discover 16 per cent of the respondents in Location 1 claimed to earn a monthly income of more than RM50,000. Although the truthfulness of this assertion is doubted by the writer, it only involved a small percentage of the respondents.

4. *Main Attractions of Gated Communities*

Table 5.2 : Motivations for Living in Gated Communities

Ranking of importance	Location 1	Location 2
1	Security	Security
2	Neighbourhood environment	Privacy
3	Privacy	Neighbourhood environment
4	Property value / investment	Traffic reduction
5	Exclusivity and status	Exclusivity and status
6	Sense of community	Amenities
7	Amenities	Property value / investment
8	Traffic reduction	Sense of community
9	Private maintenance	Private maintenance

Majority of the respondents in both locations chose security as the main motivation for living in a gated community. Respondents in Location 1 chose “neighbourhood environment” as their second motivation, followed by “privacy”. Respondents in Location 2 chose “privacy” as the second motivation, followed by “neighbourhood environment”. Interestingly, the least important motivation for both communities is “private maintenance”.

Despite the low number of responses, the consistency of the feedback by respondents in both gated communities is conceivably sufficient enough to indicate that the main attraction of gated community was security. This outcome supports the finding in Sazzelina’s and Norazmin’s dissertation where security was the main priority for people to choose to live in gated communities.

Table 5.3 : Motivations for Living in this Particular Gated Community

Ranking of importance	Location 1	Location 2
1	Security	Location
2	Location	Security
3	Property value / investment	Privacy
4	Neighbourhood environment	Traffic reduction
5	Privacy	Neighbourhood environment
6	Exclusivity and status	Exclusivity and status
7	Sense of community	Amenities
8	Amenities	Property value / investment
9	Traffic reduction	Sense of community
10	Private maintenance	Private maintenance

In choosing to reside in their present community, the respondents selected “security” and “location” as the two most important motivations for both residential areas. Again, this shows that the main attraction for people to live in gated community is for security, although location still remains an influential factor in making a real estate purchase.

Consistent with the results in Table 5.2, the respondents in both communities agreed that private maintenance was the least important reason for purchasing a property situated in a gated community.

5. *Level of Satisfaction*

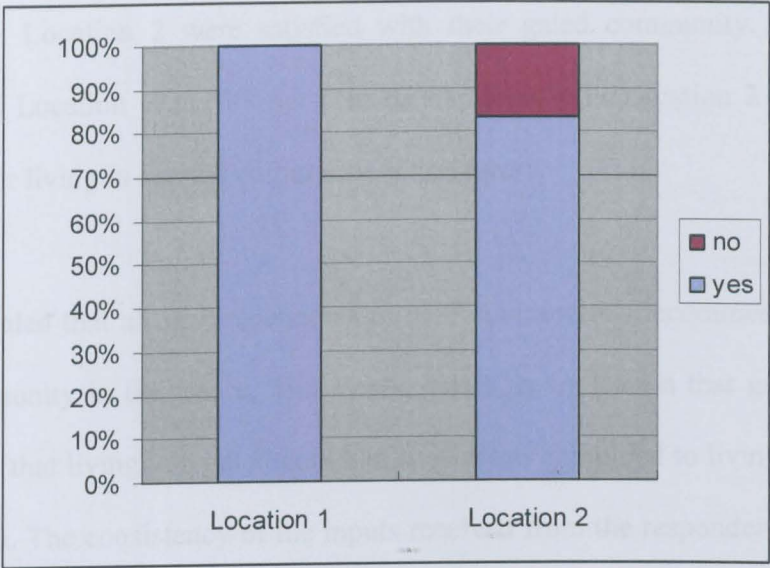


Chart 5.8: Satisfaction of Living in Gated Community

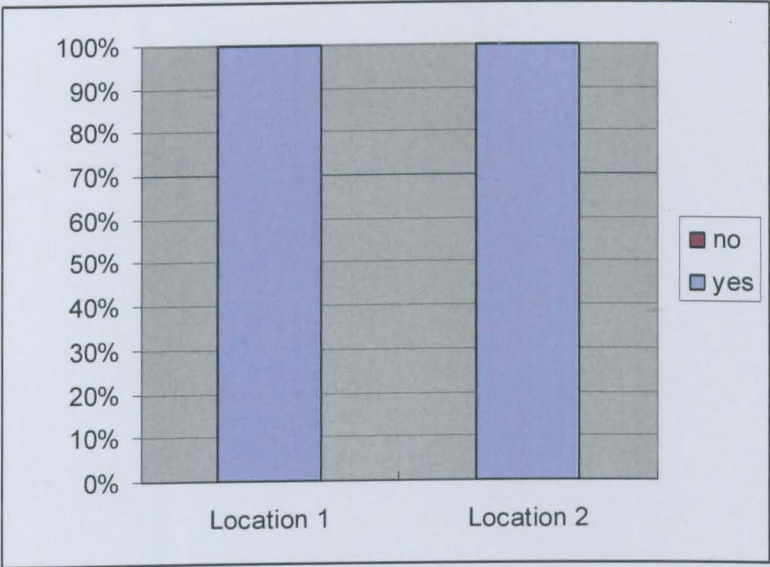
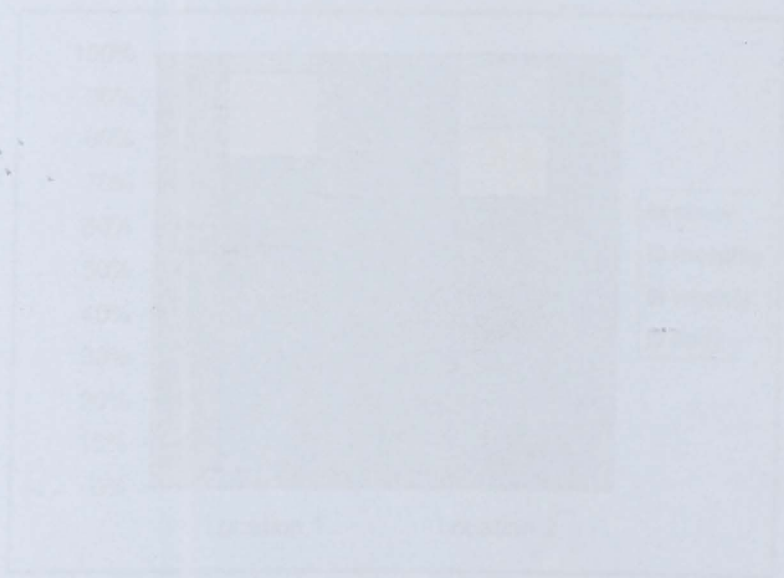


Chart 5.9: Would Recommend Gated Community to Others

Chart 5.8 shows that all respondents in Location 1 were satisfied with the level of security in their community, their location and neighbourhood environment, while 67 per cent of respondents in Location 2 were satisfied with their gated community. 96 per cent of respondents in Location 1 and 83 per cent of respondents in Location 2 would consider either buying or living in a gated community in the future.

Chart 5.9 revealed that all the respondents in both communities recommend others to live in gated community in the future. This result shows an indication that gated community residents think that living in a gated community is better compared to living in a non-gated residential area. The consistency of the inputs received from the respondents in this matter indicates a strong satisfaction with their present communities and with the concept of gated community living.



6. Community Interaction

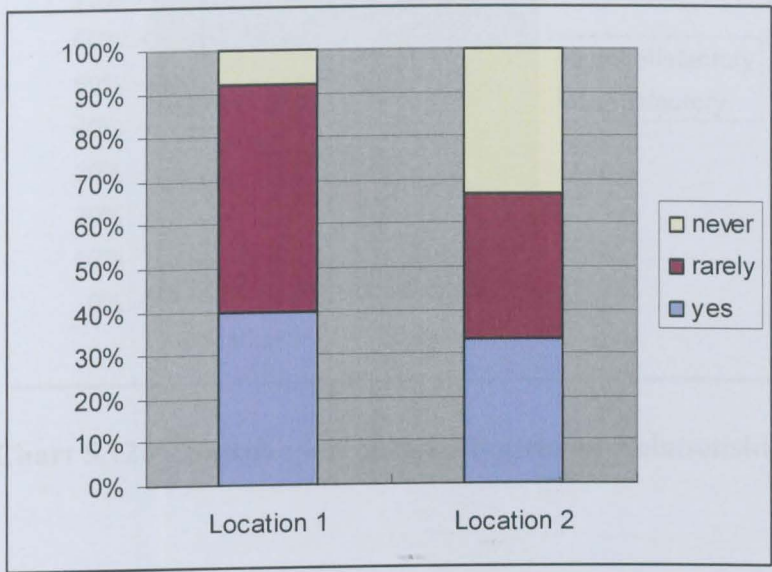


Chart 5.10: Frequency of Neighbourhood Visit

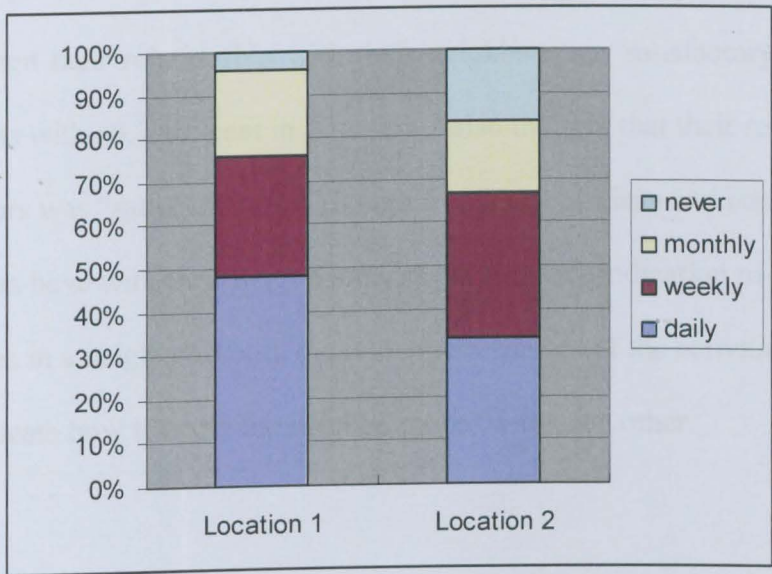


Chart 5.11: Frequency of Neighbourhood Conversation



Chart 5.12: Satisfaction of Neighbourhood Relationship

In terms of neighbourhood relationship, 52 per cent of the respondents in Location 1 rarely visited their neighbour although 48 per cent of them claimed to have conversation with their neighbour on a daily basis. Despite this, 84 per cent of respondents in Location 1 rated their relationship with their neighbour as “satisfactory”. Majority of the respondents with 66.7 per cent in Location 2 also thought that their relationship with their neighbours was “satisfactory”. Although frequency of visits and conversations that the respondents have with their neighbours are not the only indication of the strength of community ties in a neighbourhood, the rate of recurrences of the activities can possibly be used to indicate how friendly the neighbours are with each other.

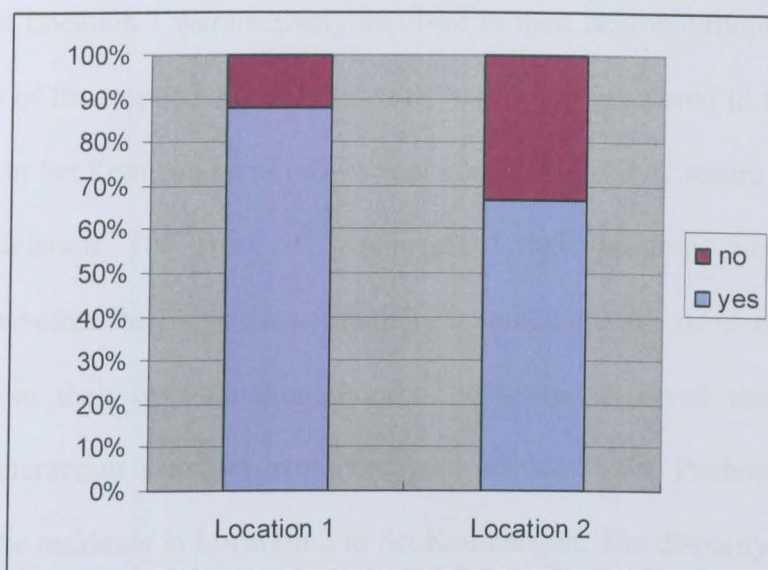


Chart 5.13: Wish to Screen Potential Neighbour

The majority of the respondents in both gated communities would like to screen their future neighbours if they were given an opportunity to do so. 88 per cent of respondents in Location 1 and 66 per cent of respondents in Location 2 agreed with this suggestion. This shows that the respondents were keen to control the type of residents in their neighbourhood and possibly would only accept people with good background and of similar standing.

7. Awareness of Residents Association

All respondents in Location 1 in Puchong were aware that they had a residents association, although not all of them actually participated in the association's activity. From the writer's interaction with the residents, it was observed that the residents association in Location 1 was very active because they had a strong committee. Most of them were aware of the issues relating to their neighbourhood and they would bring up

these issues in the meetings with the developer and even to the media. However, not all respondents in Location 1 were actively involved in their neighbourhood activity. Still, the awareness of the respondents in Location 1 was better compared to the respondents in Location 2 in Sri Kembangan as only 50 per cent of them were aware that they had a residents association. The level of awareness of their residents association is an indication of whether the particular community is united and the residents are aware of the activities in their own neighbourhood. The writer observed that the level of community interaction between residents in Location 1 in Puchong was higher compared to the residents in Location 2 in Sri Kembangan. The disparity in the level of awareness could be attributed to the location of houses, where the houses in Location 2 consisted of bungalows with low density, larger land area and were located at considerable distance from each other. This could possibly reduce the level of interaction and the level of awareness of the existence of a residents association in Location 2.

H. *Further Survey Observation*

Apart from the observation drawn from quantitative data as above, the writer found that even though the level of responses received by the residents in both communities were low, the findings of the survey were mostly consistent with the findings of the other three surveys. The consistency of the findings was obvious in the results relating to factors of choosing to live in gated communities by the residents. Further observations on the survey by the writer are discussed below with reference to the objectives of the survey.

1. *Whether Gated Communities Promote Racial and Economic Segregation*

Majority of the respondents of both gated communities in this survey were Chinese. However, due to the limited number of respondents it is insufficient to conclude that most of the residents of gated communities surveyed were Chinese and that gated communities promote racial segregation. Nevertheless, from the personal observation of the writer while present in the neighbourhood and the conversation with some of the residents in Location 1, it appeared that the dominant race in Location 1 was Chinese. However, a more comprehensive survey needs to be done by the government to ascertain the validity of the claim that gated communities encourage racial segregation.

From this survey, most respondents in the surveyed gated communities were from high income group, with majority of them earning between RM5,001 and RM10,000 per month.¹⁵¹ Most of the respondents were professionals and worked either in private sector or self employed. The survey results revealed that there was no respondent from low income group in both gated communities. There is a possibility that some residents were in low income group, however, given the general feedback received, the price of the property in the area and the physical observation made by the writer, the possibility of a person with low income group purchasing the house in the area is low.

¹⁵¹ The categorisation of household income is discussed in Part III, subpart B of this Chapter.

2. *Motivations for Living in Gated Communities*

The survey reveals that majority of the respondents in both gated communities chose security as the main attraction of gated communities. This indicates that the respondents valued security as the main reason for support gated communities. Generally, the second and third most popular attractions of living in gated communities were neighbourhood environment and privacy. The respondents agreed that the least attractive feature of gated community living was having private maintenance of the residential area. It is possible to conclude that whilst having all the extra features associated with gated communities, the respondents still preferred their area be maintained by the local authorities. If the relevant authorities can provide the level of security and neighbourhood environment as in gated communities in a conventional housing, it might discourage some respondents from buying properties in gated communities.

When asked why they chose their present gated community, the respondents chose security and location as the main attractions of their present residences. This shows that location still plays a major role in enticing homebuyers into buying a property. The fact that gated communities offer security compared to their non-gated counterparts had allured these respondents to choose gated community living. It can thus be said that security is a crucial factor for homebuyers in choosing whether to live in a gated community or not.

3. *Whether Gated Communities Encourage Healthy Relationship between Neighbours*

As regards the question whether gated communities encourage healthy relationship among neighbours, it can be said that the respondents in both communities were generally satisfied with the rapport that they had with their neighbours. Although they rarely paid visit to each other, most claimed that they did speak to their neighbour on a daily basis. Although the results from this survey showed that the residents of gated communities considered themselves to have healthy relationship with their neighbours, the results however cannot be used to conclude whether the level of relationship among the residents in gated communities is better compared to the residents in conventional neighbourhood.

As a conclusion, it can be seen that from the survey, gated communities could only be afforded by those in middle and high income groups. The survey revealed that most people chose to live in gated communities for security and most of them felt that the provision for private maintenance in gated communities was the least important attraction of gated communities. The respondents were satisfied with the relationship between neighbours in their gated communities.

VI. CONCLUSION

As discussed above, the writer's study has revealed that the strongest motivation for the residents in purchasing their properties in gated communities is security. This outcome is in

line with the survey carried out by the *Royal Commission to Enhance the Operation and Management of the Royal Malaysia Police* in 2005, which revealed that majority of Malaysians were very worried about the level of crimes in their housing area. As the police force is understaffed, gated communities have become more popular with Malaysians who believed that living in gated communities are safer compared to living in conventional housing.

Studies have shown that gated communities were capable of reducing the number of crimes in neighbourhoods. Nevertheless, there were studies in some countries which revealed that gated communities were only effective to reduce crimes temporarily and could possibly attract criminals to the neighbourhood as the residents of gated communities were sometimes perceived as wealthy. The strict level of security still has the risk to be overcome by strong-willed and persistent thieves in the future.

In addition, as there is no requirement for developers to carry out any background examination of the potential buyer or resident of gated communities, a person with criminal background can reside in a gated community. Besides that, some residents of gated communities have a tendency to take their safety for granted and rely mostly on the security guards to keep their neighbourhood safe. The total reliance on the security guards is unhealthy and risky as there were incidents where the security guards employed by the security agency were found to be dishonest and have committed crimes. The complacent attitude towards the whereabouts and the safety of the children inside gated communities can also put the children's lives in danger.

Gated communities have been found to increase the sense of community between the residents as evidenced by the research conducted in South Africa and in the United States of America. Residents in gated communities found that they share common values. As revealed by the survey carried out by the writer, majority of the residents in the gated communities surveyed rated their relationship with their neighbours as satisfactory. On the other hand, the practice of requiring majority of the residents in a conventional housing to give their approval before a neighbourhood area can become a guarded community has sparked the feeling of dissatisfaction among the residents. The residents who paid for the cost of the employing security guards were discontent as those who refused to pay also enjoyed almost the same level of protection of those who paid. In a more proper gated community set up, instead of confronting their neighbours in an informal and friendlier manner, some residents might choose to approach the management employee or the security guard to settle their conflict. In this regard, gated communities might increase the sense of community among the residents.

The writer found that gated communities can increase the level of privacy for the residents. As the neighbourhood aims to protect the safety of the residents, non-residents are not allowed to enter gated communities without a legitimate reason, thus protecting the residents from interference from unwanted parties such as unsolicited salespersons.

Another strong opinion for gated communities is that they promote better venue management in the location area and can assist in bringing to the attention of the authority the lack of facilities of underdeveloped and ignored poor neighbourhoods in the area. As new developments of gated communities can also increase the price of real property in the

surrounding area, this outcome will benefit the local community in term of housing price. Nevertheless, the conventional and non-gated housing around the gated communities also face the risk of displacement of crimes and traffic in the area. As gated communities can discourage criminal from committing crimes inside the neighbourhood, there is a risk of houses in the surrounding area becoming more vulnerable to crimes compared to gated communities. Without proper planning, gated communities may also cause traffic displacement in the area and may consequently have a negative impact on the traffic movement in the area.

Gated communities have been found to increase the value of the property, although the increase was more apparent and consistent in larger and wealthier gated communities. In Malaysia, it was discovered that gated community developments had managed to increase the property values as evidenced by the rise in price in Duta Nusantara in Sri Hartamas, Tropicana Golf and Country Resort in Petaling Jaya and Gita Bayu in Sri Kembangan. However, gated communities built in rural areas could affect the price of the once unpopular land. The increment of property price in gated communities could have a ripple effect on the surrounding lands which would in return escalate the price of these lands, making them less affordable to those in the lower income group.

The most serious and crucial view relating to gated community developments is that gated communities encourage social segregation between races and between the rich and the poor. As for the allegation of social segregation, the writer found that it is impossible to ascertain the validity of such claim since not all gated community residents were responsive to surveys carried out by various educational institutions on this matter. Apart

from that, not all gated communities were identified by the government through the website of the Ministry of Housing and Local Government. Therefore the actual number of gated communities could not be ascertained and a comprehensive survey of all gated communities could not be carried out. Based on the survey carried out by the writer, majority of the respondents in Location 1 in Puchong were Chinese but there was no dominant race in Location 2 in Sri Kembangan. It is difficult to arrive at a definite conclusion although the combined results of surveys in both gated communities revealed that the Chinese was the dominant race.

As for the view that gated communities promote economic segregation between people in higher and lower income groups, the writer found that this opinion has a strong basis in Malaysia. Based on the research conducted by the writer, most gated communities were built as high cost housing developments and as such could only be afforded by those with high and middle level of income.¹⁵² As houses located outside gated communities are catered for various types of housing and housing costs, gated communities can be said to focus on the wealthy populace. Therefore, in this sense gated communities were found to promote systematic segregation through housing price between those in high and low income groups, to a certain extent.

Although gated communities were reported in other countries to have caused delays in the delivery of emergency services in some countries, there has been no such incident reported in Malaysia. From interviews conducted by the writer with the residents and the security

¹⁵² From survey conclusion and other sources such as reports by the media.

guards,¹⁵³ they were generally respectful of the authority of the police and the emergency teams entering the neighbourhood, although some of the employees of the local authorities were inconvenienced by the restrictions in a number of gated communities.

In summary, gated communities do have potential implications on the social developments in Malaysia. It is difficult to conclude on the social aspects of gated communities given the peculiar background of the Malaysian society; whether the positive implications of gated communities override the negative implications of such developments and whether gated community developments contradict the policies discussed in Chapter Three to resolve the issue of racial imbalance in urban areas. There is a need for a more comprehensive survey that can ensure better participation of residents. In the meantime, it appears that the government has approved gated communities although the long term implication of this action is yet to be determined.

The following chapter will move on to give recommendations of gated community developments in Malaysia.

¹⁵³ The residents and the security guards were interviewed by the writer in gated communities located in Kuala Lumpur and in Puchong. They requested to remain anonymous.

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

I. CONCLUSION

The dissertation had listed five objectives of its study in Chapter One. For the purpose of concluding on the discussion of the dissertation, the discussion in this Chapter will be based on the objectives of the dissertation. The recommendations for this dissertation, which is also the content of the last objective, are discussed after that.

A. *To Study the Developments of Gated Communities in the Klang Valley*

This research found that gated communities have grown rapidly over the past five years in Malaysia. As gated communities are closely associated with perimeter fencing, Chapter Two explored the history of the practice of fencing in Malaysia. The practice of fencing one's properties originated as part of the natives' custom to protect their produce and properties.¹ This practice was given legal recognition since the 15th century through the implementation of *Hukum Kanun Melaka* as one of the earliest written Malay customary law in Malaysia. The types of fences have significantly evolved throughout the centuries; from the usage of bamboos to the state-of-the-art electronic fences which exist in present-

¹ As discussed in Chapter Two.

day gated communities. Despite this, one of the main objectives of fencing and gating one's property remains the same over the years; to protect the person's family and properties.

Although the initial and the main existence of gated communities is for the reason of security,² many purchasers were also attracted by other benefits of gated communities such as traffic reduction, better neighbourhood environment and better return of the realty price. It is observed that similar concept has been extended to terrace housing developments in addition to bungalow housing projects. Presently, there are more than 100 gated developments in the Klang Valley, as discussed in Chapter Two, and the number is probably on the rise in light that gated communities are now legalised by the amendment to the STA in 2007. It is observed that gated community developments will most probably continue to grow, particularly in the urban areas, as security in neighbourhoods appears to be the prime concern of the populace.

B. *To Study the Effect of the Developments of Gated Communities on the Housing Needs in Malaysia*

Presently, there is no specific housing policy formulated in Malaysia. The country's various policies regarding housing were essentially shaped by factors including economic imbalances between races, the threat of communism and the high rate of urbanisation in certain locations.³ The Malaysian government strives to provide adequate housing for the people. In this context, it may be said that gated community developments are beneficial mainly to those within the high income group.⁴ The supply of housing for the poor and for

² As discussed in the survey results of Chapter Five.

³ As discussed in Chapter Three.

⁴ *Ibid.*

those in low income group are mainly provided by the government as private developers are more interested in the construction of high cost housing which yields higher profit. Although flats and low-cost flats are more affordable to individuals in the low income group, such developments do not generate much interest from the private developers and some developers merely build such housing to satisfy the 30 per cent quota imposed by the government.⁵ With the popularity attained by gated communities, there is a concern that the developments of conventional type of housing might be affected as more developers turn their developments into gated communities and have even extended such developments to remote areas.⁶ As discussed in Chapter Three, the local authorities play an important role in ensuring that approvals for gated developments are only to be granted after taking into consideration the likely social implications of gated communities and the effect of such developments to the sustainability of the area.

C. *To Identify Legal Consequences of Gated Community Housing Schemes*

Although the Strata Titles Act 1985 (hereinafter referred to as the “STA”) was amended to provide for, *inter alia*, gated community developments, the amendments to the STA and the introduction of the Building and Common Property (Maintenance and Management) Act 2007 (hereinafter referred to as the “BCPMMA”) have yet to solve all legal issues associated with gated community developments. The writer found that the main issue is the legal position of the existing gated communities that were developed before the

⁵ *Ibid.*

⁶ As discusses in Chapter Five.

amendments to the STA in 2007.⁷ As many gated communities did not obtain any approval from the local authorities, the legal status of these communities is in limbo. There are concerns over the existence of barriers in these gated communities and whether there is a need to open the communities to the public as the open space and roads located inside are considered as public space. The purchasers feel that they have become victims of the promises by the developers and are not adequately protected by the law.

As for gated communities built after the amendments to the STA, the purchasers face the risk of delay in obtaining their strata titles. As discussed in Chapter Four, many reasons contributed to the delay in strata titles issuance. There have been concerns that by amending the STA to provide for strata title issuance to landed gated communities, it would become another burden for the land office to cope and similar problems associated with delay in strata title issuance would recur also as regards to gated community developments. Other possible implications of the 2007 amendments relate to the competency of the Commissioner of Building, the lack of regulation under the BCPMMA, the appointment of managing agent, the possibility of fraudulent certification in strata developments, the establishment of the Strata Titles Board in each State, the difference in interests between parties in mixed developments, and the impracticality of the 75 per cent requirement for statutory termination by the purchasers.

Apart from that, issues relating to the legality of withholding a visitor's identification documents by the security guards, the possible infringement of privacy and the uncertainty as who would be deemed as the "occupier" in the gated communities are also discussed in

⁷ As discussed in Chapter Four.

Chapter Four. It can be said that there is still room to improve the related statutes as discusses in later in this Chapter.

D. *To Evaluate Possible Social Implications Arising From Uncontrolled Growth of Gated Communities*

Based on various studies conducted overseas and in Malaysia, the writer was able to identify some positive and negative implications of gated community housing schemes. The advantage of living in gated community is that gated community is considered as safer than non-gated housing schemes. This is due to the fact that gated communities are equipped with better security facilities such as perimeter fencing, security patrol in the area and restricted access to the neighbourhood. In reality, there is nothing immoral about pursuing and providing security for one's family. However, this perception also operates against the residents as some of them are taking matters relating to security and safety in their neighbourhood for granted. In return, they become more vulnerable to the criminals. There was also a comment that far from solving the problem of crimes as a whole, gated communities merely displaced the crimes to other areas.

While gated communities are claimed to promote a stronger sense of community and protect the privacy of the residents, there have been comments that gated communities are a form of social segregation between the rich and the poor. The claim was supported by the housing price of gated communities⁸ and the level of income of the residents of gated

⁸ As discussed in Chapter Two and Three.

communities as revealed by result of the survey conducted by the writer.⁹ Although gated communities brought modernisation to some areas which previously were neglected by the authorities, the developments of gated communities in such area were also perceived as taking away potential development land for the underprivileged society. As regards to real estate price of the properties, it was also pointed out that location of the properties is also a determining factor.¹⁰

It is uncertain whether gated communities promote racial segregation between races in Malaysia. This particular possible social implication could not be concluded by the present writer's survey as the response rate received from the residents in the survey was low, although it was shown that in one of the locations surveyed, majority of the respondents were of the Chinese race.¹¹ As such, a more comprehensive survey needs to be carried out in a larger scale by the authorities.

E. *To Determine Whether Gated Communities Should Be Encouraged in Malaysia and to Offer Viable Alternatives to Having Gated Communities*

Several issues need to be considered in assessing whether to promote or discourage developments of gated community housing schemes. The most relevant factor to be considered is the view that gated communities promote racial and financial segregation in the Malaysian community. For the purpose of determining the justification of such assertion, the writer is of the opinion that a national survey on a larger scale needs to be carried out by the government either through the Ministry of Housing and Local

⁹ As discussed in Chapter Five.

¹⁰ *Ibid.*

¹¹ *Ibid.*

Government or the Ministry of Natural Resources and Environment. This is to ascertain the validity of such claim since the argument is serious and warrant an intensive study and survey at a national scale.

Another matter that needs to be considered by the government is the effect of gated communities on the sustainability of the environment in the local area. As gated communities promote cul-de-sac neighbourhoods, the local authorities need to take into account the effect of permitting partitions of gated communities to exist within the urban structure. Gated community developments must not impede the present and future traffic patterns and there is a rational concern that gated communities might cause traffic displacement on the nearby areas. As such, there is a need to examine the viability of such housing in the long run as to encourage future traffic integration in the area.

The writer is of the opinion that while gated community developments should not be generally encouraged, the government also needs to consider likely implications on purchasers that have already bought such properties from developers should developments of gated communities be prohibited. The interests and concerns of purchasers that have opted for gated communities must be addressed. The following discussion offer suggestions to address such concerns.

II. RECOMMENDATIONS

The recommendations of the dissertation focus on the need of the present purchasers of gated communities and the residents of conventional neighbourhoods. The main recommendation is for the government to conduct an official study on the implications of gated communities. The next recommendation is to improve the existing legislations for purchasers of gated communities post 2007 and to accommodate existing purchasers of gated communities in the present legislation. Other recommendations include to minimise the possible social implication associated with gated communities and to improve the level of security in non-gated or conventional housing in Malaysia.

A. *Conduct a Formal Study on the Overall Impact of Gated Community Housing Schemes*

The most important step that needs to be undertaken by the government through the Ministry of Housing and Local Governments and the Ministry of Natural Resources and Environment, is to establish a national policy on such developments. This can be accomplished by preparing an exact data of the number of landed gated communities that exist in Malaysia and by studying the implications of gated communities in Malaysia.

In order to accurately compile the data of gated communities in Malaysia, characteristics of a gated community should be formally laid down in order to ascertain what is or is not to be considered as a gated community housing scheme. The most essential features would be the perimeter fencing, with controlled access to the area (with all types of security features) and the requirement of paying maintenance fees to the developer (privatisation of

maintenance). Although the Ministry of Housing and Local Environment has set up a housing database on this,¹² it appears that the information was not adequate, thus the available data is not sufficient for the purpose of data processing.

Consequently, the government must set up a committee to study the short term and long term effects of gated community developments to the nation. A thorough and systematic study needs to be done, covering the effect of gated communities to the spatial, physical, social, environmental and economical conditions in Malaysia. While the spatial, physical, environmental and economic studies can be prepared by the relevant authorities without involving the residents of gated communities, a social study would depend on the residents' participation. As evidenced by this dissertation and other studies undertaken by students in local universities, the response rate received from the residents in gated communities was consistently low. In order to get a precise result, a social study on gated communities requires a high participation rate from the residents. Otherwise, the outcome might not be entirely accurate. The government must in some way makes it compulsory for the residents of gated communities to participate in such surveys and the developers must play an active role in helping the government in this matter.

It is hoped that the suggested studies would contribute towards enabling the government to assess whether gated communities should be allowed to flourish in Malaysia. The policy relating to gated community developments must be in line with the Malaysian government's effort to achieve a sustainable environment, especially in the urban areas. Should developments of gated communities be allowed, proper and standard guidelines

¹² Refer to Chapter Three.

need be put in place in accordance to the policy. Such guidelines are to be used as standard requirement for all gated community developments in order to ensure uniformity in requirements and procedure. Discretion exercisable by the local authorities on whether to allow developments of certain gated communities is to be exercised reasonably, fairly and in accordance with the law. The decision making process should be transparent to prevent abuse of power by the local authorities.

B. *Improve the Legislation Pertaining to Gated Community Developments by Referring to Relevant Legislations in New South Wales and Singapore*

Since the implementation of the amendments to the STA and the introduction of the BCPMMA on 12 April 2007, gated community developments are now endowed with legal status in Malaysia. Although developments of gated communities should not be encouraged by the government, the rationale of the move to incorporate land parcels into the STA could be discerned. Although gated communities have been legalised, adequate steps must be taken to minimise the social risks of gated communities.

As remarked in Chapter Four, the local legislation such as the STA and BCPMMA require further legislative amendments. The recommendations in this Part focus on recommending amendments to the legislation. For reasons to be discussed below, it is necessary to study the existing legislations in New South Wales, Australia and Singapore relating to issuance of titles, as well as management and maintenance of buildings in gated communities.

Before the STA was enacted in 1985, provisions concerning subdivided buildings in Malaysia were found in the National Land Code 1965. These provisions which were based on the Australian New South Wales Conveyancing (Strata Titles) Act 1961.¹³ Similarly, the Singapore Land Titles (Strata) Act (Cap. 277) was also modeled on the New South Wales Conveyancing (Strata Titles) Act 1961. The New South Wales Conveyancing (Strata Titles) Act 1961 was later repealed by the New South Wales Strata Titles Act 1973.

The Malaysian STA enacted in 1985 was based on the abovementioned New South Wales Strata Titles Act 1973 and also on the Singapore Land Titles (Strata) Act (Cap. 277).¹⁴ Our BCPMMA is also based on the Singapore Buildings and Common Property (Maintenance and Management) Act 1973 (Chapter 30).¹⁵ Indeed, the Malaysian STA and the BCPMMA are based on the law in Singapore and New South Wales, where both countries have been rather successful in administering their gated community developments.¹⁶ However, New South Wales and Singapore have gone much further than Malaysia as their legislations have undergone legal transformation to accommodate the needs of their citizens. Some of the provisions available on the relevant legislations in New South Wales and Singapore do not exist in Malaysian legislations.

In order to improve the legislation relating to gated communities in Malaysia, with specific reference to the STA and the BCPMMA, a study on the legal approach adopted by

¹³ No 17 of 1961. It has since been repealed by the Australian New South Wales Strata Titles Act 1973, which was later repealed by the Strata Schemes Management Act 1996.

¹⁴ 1970 Revised Edition. Refer to Teo, Keang Sood, *Hak Milik Strata di Malaysia*, (Malaysia: Dewan Bahasa dan Pustaka, 3rd ed., 1995), p.5.

¹⁵ Which has now been repealed by the Building Maintenance and Strata Management Act 2004 (Chapter 30C).

¹⁶ Singh, Gurjit, "Trials and Tribulations of Gated Community Housing Schemes", *Seminar on Issues in Gated Community Housing Schemes*, Johor Bahru, 13 August 2005.

Australia and Singapore on developments of gated communities is necessary. As such, the following discussion will focus on the legal provisions in New South Wales, Australia and Singapore.

1. *Australia (New South Wales)*

In Australia, properties in gated communities are now issued with community titles. The laws relating to gated communities in Australia are governed by various state laws.¹⁷ Although each state has its own version of the community title legislation, the concept of community titles originated from the New South Wales legislations through the implementation of the Community Land Development Act 1989 and the Community Land Management Act 1989.¹⁸ As of June 2007, there were approximately 144,000 residents in 450 community titles schemes registered in New South Wales.¹⁹ The following discussion on the legal position of gated communities Australian is based on the community titles schemes in New South Wales, governed by the Community Land Development Act 1989 and the Community Land Management Act 1989.

i. *Legislative Background of the Community Land Development Act 1989 and the Community Land Management Act 1989*

Before Community Land Development Act 1989 (hereinafter referred to as the “CLDA”) and the Community Land Management Act 1989 (hereinafter referred to as the “CLMA”) came into existence, planned communities were given effect through various contractual

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ The Urban Development Institute of Australia NSW, “Common Ground – UDIA NSW Community title Principles”, <http://www.udia-nsw.com.au/resource/Common%20Ground-UDIA%20NSW%20Comm%20Title%20Principles.pdf>, last date of access 12 October 2009.

schemes or strata titles legislation.²⁰ The New South Wales Department of Planning and Environment established a working party to probe cluster housing and theme developments in 1984.²¹ They found that the then existing Strata Titles Act 1973 was unsuitable for subdivision of cluster housing and recommended that new legislation be drafted to resolve the problem. Eventually, the New South Wales Department of Planning and Environment came up with a proposal which resulted in a package of community title legislation passed in 1989 and became operative on 1 August 1990.²² The legislations were the CLDA, the CLMA, the Strata Titles (Community Land) Amendment Act 1989 and the Miscellaneous Acts (Community Land) Amendment Act 1989.²³

²⁰ Bugden, Gary and Allen, Michael, *New South Wales Strata and Community Titles Law*, (Australia: CCH Australia Limited, 1991), p. 1632.

²¹ *Id.*, p. 1524.

²² With exception of few minor sections.

²³ Apart from the above legislations, the Land and Property Information, Department of Lands of New South Wales must also ensure that all new community schemes comply with the following legislation:

- Community Land Development Regulation 2000
- Community Land Management Regulation 2000
- Consumer, Trader and Tenancy Tribunal Act 2001
- Conveyancing Act 1919
- Conveyancing (General) Regulation 2003
- Dividing Fences Act 1991
- Encroachment of Buildings Act 1922
- Environmental Planning and Assessment Act 1979
- Evidence Act 1995
- Land and Environment Court Act 1979
- Local Government Act 1993
- Motor Accidents Compensation Act 1999
- Prescription Act 1832
- Real Property Act 1900 and Regulation 1998
- Residential Tenancies Act 1987
- Road Transport (General) Act 1999
- Road Transport (Safety and Traffic Management) Act 1999
- Roads Act 1993
- Strata Schemes (Freehold Development) Act 1973
- Strata Titles Act 1973
- Summary Offences Act 1988
- Surveying Act 2002
- Surveying Regulation 2006
- Valuation of Land Act 1916

Refer to NSW Department of Lands, Registrar General's Directions, 'Legislative Base To Community Schemes',

<http://rgdirections.lands.nsw.gov.au/communityschemes/thecommunityschemeconcept/legislativebasetocommunityschemes>, last date of access 17 January 2007.

A community title is not a separate form of title, but is a subset of Torrens title under the Real Property Act 1900,²⁵ similar to the operation of the strata title. The CLDA and the CLMA went through many amendments from the day they were first implemented. The CLDA allows for horizontal subdivision of land into lots and common property, while the CLMA deals with management and administration aspect of the CLDA.²⁶ The Strata Titles (Community Land) Amendment Act 1989 and Miscellaneous Acts (Community Land) Amendment Act 1989 amended the Strata Titles Act 1973 to “allow for adoption of the strata title law and practice into community scheme at the strata development stage”.²⁷ These community scheme legislations are very flexible in terms of subdivision and also management of such scheme. Only lands which are held under Torrens Title in an ordinary folio of the register in an estate in fee simple can be developed for community scheme.²⁸

ii. *Advantages of Community Title Scheme*

There are many advantages which can be attained from developing land with community title. Developments of such land, *inter alia*, offer flexibility of staging in staged developments and encourage innovative design for developers, reduce the burden of the local council maintaining the facilities and open spaces, allow the local councils to enjoy increment in the revenue as community schemes subdivision can be allowed in places

²⁵ Frazer, Sally Anne, *Conveyancing Manual New South Wales*, (Australia: LBC Information Services, 1996), p. 2311.

²⁶ Bugden, Gary and Allen, Michael, *loc. cit.*

²⁷ Frazer, *loc. cit.*

²⁸ Community scheme cannot be registered for land which is held in a qualified or limited folio of the register or under a perpetual lease from the Crown, or is already within a community, precinct or neighbourhood parcel or is already within a community, precinct or neighbourhood parcel. Refer to Sec. 5 (1) CLDA 1989.

where it was not possible to be developed before, enable the purchasers to enjoy the community facilities offered in that scheme, enable sharing of the cost of maintaining such properties among the residents, and allow the making of by-laws to control issues of behaviours of the residents which may be amended later by the association to suit the requirements and interests of its members.³⁰ As a result, more developers are interested in developing gated communities. The purchasers are also pleased to know that their investment is protected and the council can garner more income to be generated for the benefit of the public.

iii. *The Community Title Scheme*

The CLDA allows for tertiary subdivision in a community scheme.³¹ Three types of subdivision plans which can be registered and submitted as deposited plans in a community scheme, which are the:

- (a) community plan;
- (b) precinct plan; and
- (c) neighbourhood plan, or alternatively by strata plan.³²

³⁰ NSW Department of Lands, Registrar General's Directions, "Advantages of Community Schemes", <http://rgdirections.lands.nsw.gov.au/communityschemes/advantagesofcommunityschemes>, last date of access 17 January 2007.

³¹ Section 3 (1) of the CLDA defines "community scheme" as:

- (a) the manner of subdivision of land by a community plan, and
- (b) if land in the community plan is subdivided by a precinct plan--the manner of subdivision of the land by the precinct plan, and
- (c) the manner of subdivision of land in the community plan, or of land in such a precinct plan, by a neighbourhood plan or a strata plan, and
- (d) the proposals in any related development contract, and
- (e) the rights conferred, and the obligations imposed, by or under this Act, the Community Land Management Act 1989 and the Strata Schemes (Freehold Development) Act 1973 in relation to the community association, its community property, the subsidiary schemes and persons having interests in, or occupying, development lots and lots in the subsidiary schemes.

³² Every community, precinct or neighbourhood plan of subdivision must contain:

A community plan is usually used when the development is large and needs to be developed in stages. A neighbourhood plan can be used in “stand alone” (non-tiered) development or in staged (tiered) schemes and is the most widely used plan.³³ A strata plan may also be used to subdivide a building on a community development lot or precinct development lot, but may not be used to subdivide neighbourhood lots.³⁴ In certain cases where the development is very big, the precinct plan may be used, although it rarely happens. The precinct plan could only be registered after a community plan is registered, but before the neighbourhood plan is used³⁵. Each plan must consist of one lot defining some association property and a minimum of two other lots, except for strata plan which must include a minimum of two lots and may include common property.³⁶ The lots subdivided by community scheme can be owned under fee simple or by lease. The scheme is approved by registration of the plan.³⁷

In considering which type of plan to be deposited under community title developments, no specific rule existed to determine the most suitable type of subdivision. However, the factors that should be taken into account by developers before venturing into developments involving gated communities include, *inter alia*, the scale and magnitude of the development, the need for stages development, the implications on town planning, the requirements for right of entry and the degree of decentralisation of non-essential but

-
- A location diagram, which shows the subdivision pattern of the scheme;
 - A detail plan, containing the survey of the lot;
 - An association property plan; and
 - An initial schedule of unit entitlement, determining the owner’s voting right and obligations.

³³ *Ibid.*

³⁴ NSW Department of Lands, Registrar General’s Directions, “Tiered Subdivision”, <http://rgdirections.lands.nsw.gov.au/communityschemes/thecomunityschemeconcept/whatisacommunityscheme/tieredsubdivision>, last date of access 17 January 2007.

³⁵ Bugden, Gary and Allen, Michael, *op. cit.*, p. 7763.

³⁶ *Id.*, p. 1633.

³⁷ Stone, Margaret A., *Halsbury’s Laws of Australia: Real Property*, (Australia: Butterworth’s, 1998), p. 355-9620.

desirable restrictions and standards.³⁹

Each community, precinct or neighbourhood plan of subdivision must be submitted together with a management statement.⁴¹ A management statement includes vital information such as documents and by-laws which are needed to ensure that a scheme can run smoothly, and it cannot be inconsistent with the development contract.⁴⁴ Once the appropriate subdivision plan⁴⁵ is registered, an association is formed; creating its own association property and lots. The initial period also commences with the constitution of each association⁴⁶ and ends when one-third of the total units under the scheme is sold.⁴⁷ Each association is responsible for the maintenance of its respective association property. If a community or precinct plan is submitted, the developer may also submit a development contract together with the plan.⁴⁸ However, if a neighbourhood plan is submitted, it becomes mandatory for the developer to submit a development contract together with the neighbourhood plan.⁴⁹ Once registered, it becomes binding on the original proprietor as if it included an agreement under seal with covenants⁵⁰ and the operation of the covenants cannot be excluded, modified or restricted.⁵¹ The association or its member can commence a proceeding against a developer who breaches a development contract.⁵²

³⁹ *Id.* 7621.

⁴¹ Which has to comply with the provisions in either Schedule 3 of CLDA for community and precinct plan subdivision, or Schedule 4 of CLDA for neighbourhood plan subdivision.

⁴⁴ Ticehurst, Frank, *Baalman and Wells Land Titles Office Practice*, (Sydney: Lawbook Co, 5th ed., 2001), p. 60/51.

⁴⁵ Either a community, precinct or neighbourhood scheme.

⁴⁶ Section 3(1), CLDA.

⁴⁷ Azlinor Sufian, "A Legal Perspective on "Gated Communities" in Malaysia", 14 *IIUMLJ* (2006), p. 113.

⁴⁸ Section 5(5) and section 9(5) of CLDA.

⁴⁹ Section 13(4), CLDA.

⁵⁰ Section 15(1), CLMA, and to the effect as stated in Schedule 2 of CLMA.

⁵¹ Section 15(4), CLMA.

⁵² Section 106(1), CLMA.

The members of a community association⁵⁹ are the owners of the lots within the community scheme, including the precinct association, neighbourhood association and subsidiary strata corporation,⁶⁰ whichever is relevant.⁶¹ A community association or precinct association has the power to, among others, grant a sublease over some but not all, of its association property⁶² and transfer a lease it has accepted or acquired as long as the transfer or grant of lease are not prohibited by the terms or conditions in the lease.⁶³ While a community association or precinct association can lease an additional association property,⁶⁴ it cannot add any land to a community plan once the plan is registered.⁶⁵

iv. *Features in the CLDA and CLMA which are not Available in Malaysian Legislation*

There are several features provided in the CLDA and the CLMA which are absent in the Malaysian legislation, specifically in the STA and the BCPMMA. The provisions in the CLDA and the CLMA on the following matters can be adopted to solve some legal issues relating to gated communities in Malaysia. The features include provisions for access of way in the CLDA, conversion of conventional and strata subdivision to community titles, variation and termination of community titles, definition of “managing agent” and

⁵⁹ A community association has a common seal and is regulated by the provisions in CLMA.

⁶⁰ Stone, Margaret A., *op. cit.*, p.355-9635.

⁶¹ The choice of subdivision pattern is interrelated with the management structure of a community scheme. Lands which are subdivided by neighbourhood plan will produce a single level management structure, while a community plan further subdivided by precinct and neighbourhood plans or strata plan, will create a three-tier management structure.⁶¹ In the latter circumstances, the community association is the primary association for that development, also known as the “umbrella association”.⁶¹ This umbrella association will own the community property and is responsible of its management.

⁶² Section 17(1A)(a), CLDA.

⁶³ Section 17 (1A)(a) and (b), CLDA.

⁶⁴ Section 16, CLDA.

⁶⁵ NSW Department of Lands, Registrar General's Directions, 'Planning Site Development', <http://rgdirections.lands.nsw.gov.au/communityschemes/developmentofacomunityscheme/planningsitedevelopment>, last date of access 24 January 2007.

provision for alternative dispute resolution.

(a) *Private access way in community title scheme*

The CLDA provides for access of way in a community scheme which can be divided into two, namely the private access way and the open access way. A private access way is a road not open to the public and can only be used by the members of the relevant association. A private access way is used to connect part of the community parcel with an open access way within the parcel or a public place.⁶⁶ An open access way is used to connect part of the community parcel with a public place,⁶⁷ and is treated as a public road most of the time,⁶⁸ except that it remains as the property and responsibility of the association,⁶⁹ subject to its by-laws.

An open access way is considered as a “road or road related area” for the purpose of the Road Transport (General) Act 2005 and the Motor Accidents Compensation Act 1999. A private access way is also considered as “a road or road related area” for the purpose of Motor Accidents Compensation Act 1999.⁷¹ Malaysia does not have such a statute relating to motor insurance claim as in Australia. The insurance companies have the discretion whether to provide coverage for accidents that occur on public or private roads. As a matter of policy, most insurance companies exclude coverage for third party liability in accidents that occur on private roads since their policies only cover accidents on “road” as defined in

⁶⁶ Refer to Division 2, Part 5, CLDA.

⁶⁷ Refer to Division 1, Part 5, CLDA.

⁶⁸ However, an open access way is to be considered as a “private road” instead of a public road for the purpose of Roads Act 1993.

⁶⁹ Section 47(1), CLDA.

⁷¹ Section 116(3), CLMA.

s. 2 of the Road Transport Act 1980,⁷² where "road" is confined to public road or any road where the public have access.

Since gated communities involve considerable large area of developments, there are relatively extensive roads within the communities. It is time for the industry to provide coverage for accidents that occur on roads in gated communities as part of their service to the communities. At the same time, the definition of "road" under the Road Transport Act 1980 should be extended to include private roads which are considered as part of common properties in gated communities, for the purpose of providing insurance coverage relating to accidents occurring in such neighbourhoods.⁷³

(b) *Conversion of conventional and strata subdivision to community title*

The CLDA allows for conversion of conventional and strata subdivision to community title in cases where the plans were lodged by developers prior to the commencement of CLDA on 1 August 1990. Among the allowed types of conversions are:⁷⁴

- conversion of land⁷⁵ in a deposited plan⁷⁶ to a neighbourhood scheme;

⁷² Refer to Chapter Four of the dissertation.

⁷³ The extension of the definition of road to include private road must not be a blanket extension and should be confined just for the purpose of third party insurance coverage.

⁷⁴ Section 74 and Schedule 12 of the CLDA.

⁷⁵ "Land" is defined in s.3 of the CLDA as "contiguous land held under the *Real Property Act 1900* in fee simple, no part of which is land in a qualified or limited folio and which:

(a) is a lot or portion, or 2 or more lots or portions, in a current plan, or

(b) is land the subject of a transaction referred to in s. 23G of the *Conveyancing Act 1919*, or

(c) is land referred to in both paragraph (a) and paragraph (b)."

⁷⁶ According to s.3 of the CLDA, "deposited plan" means a plan of division of land that is prepared for the purposes of the CLDA, is not required to be registered under the *Strata Schemes (Freehold Development) Act 1973* and is registered after being lodged at the office of the Registrar-General in accordance with Division 3 of Part 23 of the *Conveyancing Act 1919*."

- conversion of land in deposited plans and strata plans to a community plan scheme;
- conversion of land in an open space strata plan to a neighbourhood scheme, and
- conversion of contiguous strata schemes to a community plan scheme.

In Malaysia, there is no specific transitional provision in the STA which provides for conversion of properties with conventional titles to strata titles.⁷⁷ The most vulnerable party in gated community developments are the purchasers of gated communities. Some of the purchasers were promised that the legal title conundrum of gated communities would be solved once the STA was amended. After amendments to the STA, it was clear that the provisions did not apply to the existing gated communities and there was no provision for conversion of the existing gated communities to be issued with strata titles under the STA. As a result, purchasers of gated communities prior to the amendments could only receive conventional titles. In the interest of the purchasers of gated communities before the 2007 amendments, it is suggested that the STA is amended to include a transitional provision which allows for the conversion of properties with conventional titles to strata titles.

(c) *Variation and termination of community title*

There are also provisions for variation and termination of any existing community, precinct or neighbourhood schemes as provided in ss. 70, 71, 72 and 73 of CLDA. The relevant

⁷⁷ Section 82(1) of the STA provides the State Authority with the power to make rules to provide for modification, addition or exclusion in respect of, *inter alia*, any parcels or common property, which were in existence before the commencement of the STA, for the purpose of applying the provisions of the STA to such parcels and common property STA. However, the phrase "commencement of the STA" should be read to refer to the date when the STA came into force on 1 June 1985 (P.U. (B) 276/1985). Therefore it excludes strata developments after the said date.

parties⁷⁸ can apply to the Supreme Court⁷⁹ or to the Registrar-General⁸⁰ to terminate the scheme.⁸¹ Supreme Court also has the power to terminate or vary a scheme when the completion in a staged scheme or the continuation of a scheme has become impracticable.⁸²

In Malaysia, the STA only provides for termination of strata schemes in situations where:

- the building is damaged;⁸³ or
- the building is totally destroyed;⁸⁴ or
- where parcel proprietors seek to demolish the building;⁸⁵ or
- where there is only one single proprietor for all the parcels.⁸⁶

There is no provision in the STA which provides for termination of a strata scheme in the event where it is no longer practicable or desirable by the parcel owners to maintain the common properties in strata development, which includes development of gated communities. It is not unusual to find common properties which are poorly maintained and neglected by the parcel owners, as some of them refuse to pay for sinking fund and monthly contribution. Due to this, a parcel owner who wishes to sell his parcel would find

⁷⁸ According to s. 71(1) of the CLDA, application for termination under s.70(1)(a) or (b) may be made by an association or strata corporation within the scheme, or a member of an association or strata corporation within the scheme, or a person with a registered estate or interest in land within the scheme, or a resuming authority.

⁷⁹ Section 70, CLDA.

⁸⁰ Section 73, CLDA.

⁸¹ Section 70(1) of the CLDA provides that if the Supreme Court is satisfied:

(a) that completion of a staged scheme has become impracticable- the Court may vary any applicable development contract or terminate the scheme, or

(b) that continuation of a scheme (whether or not a staged scheme) has become impracticable- the Court may vary or terminate the scheme, or

(c) that the association of a community scheme, each proprietor of a lot within the community scheme and each registered mortgagee, chargee and covenant chargee of a lot within the community scheme have made an application to the Court to terminate the scheme--the Court may vary or terminate the community scheme and any scheme within the community scheme.

⁸² Section 73(1)(a) and (b), CLDA.

⁸³ Section 56(1), STA.

⁸⁴ Section 57(1)(a), STA.

⁸⁵ Section 57(1)(b), STA.

⁸⁶ Section 57(1)(c), STA.

it difficult to sell the parcel. In such cases, the management corporation should play a proactive role by applying to the Court for recovery of the sums due by the owners in accordance with s. 53(1), STA and resort to recovery by attachment of movable property under s. 53A of the STA.

Therefore, it is suggested here that the STA is amended to allow for termination of a strata scheme on application by all parcel proprietors and the title in the common properties are vested in the former proprietors as tenants in common in shares proportional to their unit entitlements.⁸⁷

(d) *Requirement for managing agent to be licensed*

Under s.50 (1) of the CLMA, an association may appoint a licensed managing agent⁸⁸ and delegate its duties to the managing agent.⁸⁹ The appointment and delegation must be made by writing authorised by a resolution at a general meeting.⁹⁰ Failure to exercise the function of the managing agent is an offence under the CLMA.⁹¹ Although the requirement for a managing agent to be licensed might be considered as burdensome to the industry, it was reported that it had “raised the level of competence and public perception of the validity and status of the profession.”⁹²

⁸⁷ Section 73(1)(c) of the CLDA provides for such arrangement in the event of termination of a neighbourhood scheme by the Registrar-General on application by the neighbourhood association and the proprietors of the neighbourhood lots.

⁸⁸ The requirement for a managing agent to be licensed is provided in s.50(3), CLMA.

⁸⁹ Subsection (1) does not confer power to delegate the power conferred under subsection (1), power to make decision on restricted manner or to determine contributions by members or makes levies on them.

⁹⁰ Section 50 (1), CLMA.

⁹¹ Section 52 (a), CLMA.

⁹² Haler, Peter, “Australian Field Study”, the Leasehold Advisory Service,

In Malaysia, although the BCPMMA is silent with regards to the requirement of a managing agent to be licensed, it is submitted that such requirement should be introduced to the STA and the BCPMMA. Such agents must be registered under the Valuers, Appraisers and Estate Agents Act 1981 in order for them to be a valid managing agent as provided in s. 21(1)(aa) of said Act. This requirement should have been included in s. 2 of the BCPMMA to better protect the interest of the gated community purchasers as licensed property managers would be subject to the professional requirements of the Board of Valuers, Appraisers and Estate Agents. Unlicensed property manager might also have difficulties in obtaining indemnity coverage,⁹³ although the BCPMMA does provide for the requirement of such managing agent to lodge bond with the Commissioner of Building as a security. Therefore, the definition of a managing agent under s.4 of the STA and s.2 of the BCPMMA should include also the requirement for a managing agent appointed by the State Authority or the Commissioner of Building to be licensed according to the Valuers, Appraisers and Estate Agents Act 1981.

(e) *Provision for alternative dispute resolution*

Part 4 of the CLMA provides for dispute resolution relating to issues regarding community schemes, either by way of mediation, adjudication or tribunal. A person, the association or the strata corporation or an agent can apply for settlement of dispute or complaint by

<http://www.lease-advice.org/publications/documents/document.asp?item=42>, last date of access 12 October 2009.

⁹³ The National House Buyers Association, "Regulation the way to go", http://www.ppkm.org.my/valuers_act/regulation.htm, last date of access 21 March 2009.

applying to the Registrar for an order under Part 4 of the CLMA. If the matter involves a complex legal issue, an adjudicator may refer to the Tribunal for an order.¹¹⁵ Under Part 4 of the CLMA, the Registrar must be satisfied that mediation has been attempted before accepting application for settlement of dispute, and the mediation failed due to the reasons that the mediation attempt was unsuccessful or the subject matter of the application is not appropriate for mediation.¹¹⁶

There is no legal requirement for alternative dispute resolution provided in the STA and the BCPMMA. Matters in dispute are to be referred to the Commissioner of Building or the Strata Titles Board and mediation is usually utilised by parties on voluntary basis. The introduction of alternative dispute resolution in the STA and the BCPMMA would help to complement the function of the Strata Titles Board and the Commissioner of Building.

2. *Singapore*

Gated communities in Singapore are granted with strata titles, similar to the gated communities in Malaysia. The legislative background of the legislations relating to gated communities in Singapore is as follows.

¹¹⁵ Section 71B(1) CLMA.

¹¹⁶ Section 64(1), CLMA.

i. *Legislative Background*

The development of North Shore Strata Bungalow in Punggol marked the inception of cluster housing in Singapore in 1993.¹¹⁷ Gated communities in Singapore are now governed by the Land Titles (Strata) Act 1999 (hereinafter referred to as the "LTSA")¹¹⁸ which is comparable to the STA in Malaysia. The provisions on management of subdivided building in Part IV of the LTSA were repealed by Act 47 of 2004 which took effect on 1 April 2005 and most provisions regarding maintenance of properties are now included in the Building Maintenance and Strata Management Act 2004 (hereinafter referred to as the "BMSMA"),¹¹⁹ which is similar to the Malaysian BCPMMA.

Section 3(1) of LTSA defines "strata subdivision" as to include "a subdivision of land to comprise one or more strata units whether or not any strata unit is on the same level as any other strata unit." It allows for landed houses with strata titles to be created, which is known as "cluster housing" in Singapore. The administration of cluster housing is governed by the BMSMA. The BMSMA provides for proper maintenance and management of buildings, and includes provisions on:

- maintenance of buildings;
- dealings in strata subdivided buildings;
- management of strata subdivided buildings;
- management corporations and common property;
- appointment of managing agent of management corporation;

¹¹⁷ Singh, Gurjit, "Trial and Tribulations of Gated Community Housing Schemes", *Seminar on Issues in Gated Community Housing Schemes*, Johor Bahru, 13 August 2005.

¹¹⁸ The LTSA is under the purview of the Ministry of Law.

¹¹⁹ The BMSMA is under the ambit of the Ministry of National Development.

- insurance;
- termination of strata scheme;
- disputes and Strata Titles Boards, and
- staged development contract.

The rights and obligations of all parties, whether pre or post strata title, are also included in the BMSMA and this eliminates the need for Deed of Mutual Covenants.¹²² In order to resolve the issue of the status of the Deed of Mutual Covenants, It is suggested that Deed of Mutual Covenants in Malaysia be given legislative backing through the recognition of restrictive covenant as an interest under the National Land Code 1965. Any party who took the land with notice of that restriction is bound by such covenant.

The BCPMMA, although was not formally based on Singapore's BMSMA, contains a number of similar features with the BMSMA, such as the introduction of the role of the Commissioner of Building,¹²³ the requirement for the developer to establish maintenance funds¹²⁴ and the provision for the role of a managing agent.¹²⁵ However, there are several differences between some features provided in the BMSMA and the BCPMMA. For example, the applications for termination of strata scheme by the proprietors of the properties¹²⁶ and the adoption of settlement through mediation-arbitration¹²⁷ are included in the BMSMA but are not available in BCPMMA.

¹²² *Ibid.*

¹²³ Section 3, BMSMA and s. 3(1), BCPMMA.

¹²⁴ Section 16, BMSMA and s. 22(1), BCPMMA. The funds are established under different circumstances.

¹²⁵ Division V, BMSMA and Part VI, BCPMMA.

¹²⁶ The termination of a strata subdivision schemes can be done through application to the court as in s.78 LTSA or through application by the management corporation pursuant to 84 of the BMSMA.¹²⁶

¹²⁷ Section 89(2), BMSMA.

ii. *Two-tier Management Corporation*

The matter of interest with regards to the position of gated communities in Singapore is the provision of two-tier management corporation scheme which is applicable in Singapore through Division 7, Part V of the BMSMA which is particularly useful in the case of a mixed development. According to s. 2(1) of the BMSMA, "subsidiary management corporation" in relation to any limited common property comprised in a strata title plan is defined as "the subsidiary management corporation constituted for that limited common property under the Land Titles (Strata) Act". The two-tier management corporation scheme provides for the existence of two management corporations; a main management corporation and a subsidiary management corporation which could be a residential, office or shop sub-management corporation.

In Malaysia, there is no provision in the BCPMMA which allows for sub-management corporation to be created, and all parcel proprietors in a development are members of a single management corporation.¹³⁰ The adoption of the multiple-tier management corporation scheme is useful in protecting the different interests that different parcel proprietors have in a mixed development. This could be done by having proprietors of each type of development setting up their own sub-management corporation and appointing their own representative to the management corporation council. Alternatively, it is suggested that each group of development proprietors be allowed set up their own committee instead of a sub-management corporation, and any dispute between the committee and the management corporation must be referred to the Commissioner of Building.¹³¹

¹³⁰ Section 39(1), BCPMMA.

¹³¹ There are several potential complications with the adoption of multiple-tier management corporation, which include difficulty in finding adequate number of volunteers to serve in the management corporations, as well as the potential increase in the number of conflicts between the parties due to the differences in

C. *Provide for an Effective Regulation to Regulate the Application of the BCPMMA*

The Minister of Housing and Local Government with the concurrence of the State Authority may make regulations to facilitate the implementation of the provisions in the BCPMMA.¹³³ The existence of such regulations can ensure the effectiveness of the operation of the BCPMMA. The regulations need to provide for matters relating to appeal procedure, the appointment of Commissioner of Building and the provision for alternative dispute resolution for the parties. Presently, the appointment of the Commissioner of Buildings in Malaysia is limited to the Mayor or President of city council and municipal council, respectively. It is suggested that the appointment of a Commissioner of Building should not be limited to the Mayor of a city council or the President of a municipal council as these personnel are already burdened with numerous work at the local authorities. The appointment could be extended to any person with a sound legal and management background, with vast knowledge on the area and with no pecuniary and personal interests in the disputes.

D. *Efficient Appointment and Administration of the Strata Titles Board*

The establishment of the Strata Titles Board in Malaysia have left much to be desired as discussed in Chapter Four. It is therefore suggested here that the appointment of members of the Strata Titles Board be made promptly in each State by the Minister of the Housing and Local Government as the lack of such Board would delay and deny the right of

development's by-laws and different standard of maintenance between the main management corporation and the sub-management corporation. Refer to Christudason, Alice, "Legislation Affecting Common Property Management in Singapore: Confusion or solution through fragmentation?", (2008) 26 No. 3 *Property Management*, pp. 207-219.

¹³³ Section 42(1), BCPMMA.

aggrieved parties in matters provided for under the Strata Titles Act 1985, including matters relating to delay in obtaining strata titles from the developers. Since the developers have a duty to apply for the strata tile, it is suggested that the cost of applying for the strata title be included in the purchase price of the property so as to prevent the developer from raising various issue relating to cost of applying for the strata title and to prevent the purchasers from avoiding the collection of the strata title just because they refuse to pay for the cost.

It is also suggested here that booklets on strata living, which includes gated communities, be published by the Ministry of Housing and Local Government. The booklet should be distributed and made available through the internet for the public. The explanation on the difference in the role of the Commissioner of Building and the Strata Titles Board must be included, so that the purchasers of gated communities have a better understanding on this matter.

E. *Provide for an Online Database of the Purchasers of Properties*

Section 8A(1)(b) of the Housing Development (Control and Licensing) Act 1966 requires that at least 75 per cent of all purchasers must have agreed in writing to terminate the sale and purchase agreement within six months after the execution of the first sale and purchase

agreement.¹³⁴ This requirement, also can be considered as an improvement compared to the previous position where only the developer has the option to terminate such agreement, is problematic. This is considering that unlike the developers who possess the relevant documents regarding their housing development, the purchasers of gated communities do not possess the information regarding the identity of other purchasers. It is therefore suggested here that an up-to-date database on the identity of the purchasers of the gated community developments be made available to the rest of the purchasers in a case where the development has the risk of being abandoned or problematic. This way, the purchasers of the properties would have a better opportunity in benefiting from the provision in s. 8A(1)(b) of the Housing Development (Control and Licensing) Act 1966.

F. *Legislate Statute for Protection of Privacy*

As discussed in Chapter Four, presently there is no statute to protect right to privacy in Malaysia. The usage of CCTV needs to be monitored and supervised strictly as to avoid any misuse of audio visual equipment and footage. The local authorities should have the responsibility to inspect and store the footage of recording on public street while footage of gated communities should be kept by the Residents' Association or the management corporation. Irresponsible employees of the managing agent or the security personnel may circulate private recording in the gated community to certain parties who might sell copies of the recording to the public or the media and even upload it in the internet. It is suggested that the Data Protection Act be tabled at the Parliament as soon as possible to enable the

¹³⁴ Section 8A(1)(a), the Housing Development (Control and Licensing) Act 1966.

protection the right to privacy of the people in Malaysia. The Data Protection Act must be able to provide for, *inter alia*, the protection of the residents living in gated communities and the visitors of such residents, particularly on the data obtained from CCTV recording in the area.

G. *Enforcement of the Provisions in the Relevant Statutes*

Despite the amendments to the provisions in the STA to cater for gated community developments and the introduction of the BCPMMA in Malaysia, it is very important to ensure that the introduction and amendments to the statute are followed through by enforcement by the relevant agency. Otherwise, the statute would be considered as having no real effect and ineffective to solve the legal problems which initiate the amendments or the introduction of the statute in the first place. For example, if the original proprietor and the developers who failed to apply for subdivision of a building or land within the specified period in s. 8(2) or (4) shall be guilty of an offence and if convicted, be liable to a fine of not less than RM10,000 but not more than RM100,000 and to a further fine of not less than RM100 but not more than RM1,000 for each day of continuance of the offence. Such provisions must be fully implemented by the authorities to demonstrate sufficient enforcement by the authorities and protect the rights of the aggrieved parties, which in this context are the purchasers.

H. *Eliminate Negative Public Perception on the Social and Planning Implications of Gated Communities*

Exclusive possession of land under the STA is a fundamental concept for the enjoyment of the owner of the land. Since gated communities are associated with promoting segregation of the communities by restricting public access, the residents of gated communities and the government must make efforts to reduce or even eliminate unhealthy perception relating to gated communities, with specific reference to gated communities which were developed prior to the 2007 amendments to the STA. This can be done by allowing unrestricted pedestrian access, limiting the construction of perimeter fencing to the residential buildings only and restricting public access to the area only in the evening.

1. *Unrestricted Pedestrian Access*

Motorists are not the only party who have been affected by the closure of streets in gated communities, as pedestrians are also denied access to such housing. It is suggested that gated communities should provide unrestricted pedestrian access.¹³⁵ The security guards should allow people, except door-to-door salesperson and such, to walk into gated communities and use the facilities provided inside. The rationale of this suggestion is since it is difficult to commit a crime, especially property crime without having an escape vehicle, there is a low possibility that criminal would commit a crime while being on foot. This can deter them from committing crimes inside gated communities. In return, the amenities and parks inside gated communities can be used by the public without compromising the safety

¹³⁵ Heavy Trash Organisation, "Heavy Trash Installs Viewing Platforms at Los Angeles Gated Communities", <http://heavytrash.blogspot.com/2005/04/april-24-2005-for-immediate.html>, last date of access 17 June 2009. The Heavy Trash Organisation is an anonymous arts organisation of architects, artists, and urban planners.

sought by gated community residents,¹³⁶ thus avoiding over-privatisation public space. This suggestion is sound as most facilities and open spaces in gated communities in Malaysia, except for properties which were granted strata titles, in reality belong to the public.

2. *Limiting Construction of Perimeter Fencing Around Residential Buildings Only*

Another alternative is to ensure that the open space area and the facilities inside the gated communities are to be located outside of the gated communities or the perimeter fencing in order to allow access by the public to these locations. The residents may be allowed to erect fencing within the perimeter of the houses and leave the open space ungated. This way, the public would have access to the recreational facilities inside and the residents, especially the children in the area, can socialise with those who do not live in the same neighbourhood. This notion has been implemented through the guidelines by the local authorities in Selangor and should be extended to all states.

3. *Closure of Gate in the Evening Only*

Some gated communities in overseas only close their gate at night and leave it accessible during daytime. There is a strong perception that most crimes happen at night, as we are

¹³⁶ *Ibid.*

most vulnerable during those hours due to the tiredness, sleepiness and also the darkness. Opening the gate during daytime would also suggest the housing area is accessible to the public to use the facilities and enjoy the open space inside. This suggestion is a requirement in the approval guidelines for guarded community as issued by the Selangor Housing and Real Estate Board.

I. *Improve the Level of Security and Privacy in Conventional Housing Schemes*

The alternative to having gated community housing schemes is to maintain the working of the conventional housing developments in Malaysia. However, since the existence of gated communities is mainly contributed by fear of crime, there is a necessity to improve the level of security and privacy in conventional housing areas. It is therefore suggested that the level of security in our country be improved as the apparent reason for the existence of gated communities is due to the low level of security as perceived by the respondents. If the level of security in non-gated neighbourhood can be improved, the confidence of the public in our local enforcement authority can be restored and there might be no necessity for the public to live in gated communities in the future. The suggestions on how to improve the security and privacy of conventional housing area are discussed below.

1. *Improve the Number and the Distribution of Policemen*

The number of the police force in Malaysia, namely the Royal Malaysia Police Force must be improved, as well as the quality of the officers produced from the police academies. In

some parts in Malaysia, the problem lies with the unequal distribution of policemen at certain locations, and the number of policemen allocated to do administrative works. If these policemen are fairly distributed to the relevant areas, they would be able to carry out their duty more effectively and perform frequent patrols to deter crimes. In this way, the public will also have a strong trust towards our law enforcement officers and they will sense no need to employ security guards to protect their families and neighbourhoods. By not employing any security guards, the people will be more aware and conscious of their surroundings as opposed to relying solely on the security guards to ensure their safety.

2. *Encourage the Rakan Cop Programme*

Reports have shown that Rakan Cop programme has successfully helped to reduce the crime rate in several locations. The Rakan Cop programme was set up to reduce the gap between the police and the public by encouraging 'smart partnership', and also to get the public to become the eyes and ears for the police in combating crimes.¹³⁷ It offers a two-way information system where the public can become a member or a Rakan Cop and call the police or send a short messaging system (SMS) to the hotline in case of emergency. Since being first introduced by the Kuala Lumpur Contingent, the Rakan Cop programme managed to reduce the number of crimes in Kuala Lumpur by 20 per cent, where number of crimes was reduced from 24,571 in year 2003 to 19,695 in year 2005.¹³⁸ It has lowered the

¹³⁷ *Rakan Cop*, 27 February 2007, Malaysian Royal Police. <http://www.rakancop.net>, last date of access 27 February 2007.

¹³⁸ Shuman, V., "Rakan Cop a big success, KL crime rate down 20pc", *New Straits Times*, 17 February 2006.

crime rate in Pahang by 17 per cent within a year of being introduced.¹³⁹ To date, Rakan Cop has 20,511 members.

Since Rakan Cop programme also targets residents' associations to become members, it is crucial for our government to encourage the residents' associations' participation in this programme since it was proven to reduce a number of crimes. This programme can be introduced along the neighbourhood watch programme in residential areas.

3. *Encourage Neighbourhood Watch*

Neighbourhood group or committee, or notably known as "rukun tetangga", should be encouraged in residential areas in order to prevent crimes. The current neighbourhoods watch programmes are being revived after their failure in the 80's due to lack of support.¹⁴⁰ The patrolling is done by the residents themselves using a rotation system; they would volunteer to stay up and patrol the area. Apart from not having to spend extra money hiring private security guards, neighbourhood watch can improve their social relationship as they get to know each other and patrol the housing area together. A study done in Seberang Prai, Pulau Pinang has shown that there was a 50 per cent of reduction in crime where the 31 sectors in the neighbourhood watch were in operation.¹⁴¹ Residents in USJ18 in Subang Jaya claimed that the crime rate in their area reduced significantly after the neighbourhood

¹³⁹ Khoo, Simon, "Rakan Cop helps lower crimes in Pahang", *The Star*, 26 January 2006.

¹⁴⁰ "Building Safe Neighbourhood", *New Straits Times*, 10 July 2004.

¹⁴¹ *Ibid.*

watch programme being introduced in their area in 1999.¹⁴² They also raised their own funds by having donation drive and managed the security of their area.¹⁴³

Neighbourhood watch programme not only improves the social relationships between neighbours and promotes social integration among our multi-racial communities, it also reduces crime, helps to lessen the burden on the police and contribute to nation-building.¹⁴⁶ The programme brings a lot of benefits, not just to the residents, but also the police and the government as a whole. The National Unity and Integration Department proposed to the Cabinet to give registered neighbourhood watch volunteers who have been patrolling for at least four hours on the night before a day off in their work.¹⁴⁷ In order to prevent abuse on the system, every application for a day off needs to be confirmed by the head of the patrolling unit and an officer of the department.¹⁴⁸ Once gazetted, all employers must abide by the rules.

As of 2006, there were 3,146 neighbourhood watch groups nationwide and only 500 neighbourhoods watch bases had their own patrol units.¹⁴⁹ 780 of the neighbourhood groups were established in urban areas bringing a total to 3,065 committees with a membership of about eight million people.¹⁵⁰ A launching grant of RM2,500 was given to the neighbourhoods that had planned to establish a patrol unit. The government had also increased the monthly grant for each neighbourhood programme from RM400 to RMM600.

¹⁴² Interview with Mr. Raymond Tan on 19 May 2006.

¹⁴³ There had also been talks with their local representative and the local police force, and the residents contributed financially in helping the police to buy two Proton Kembara for patrols.

¹⁴⁶ Boon, Chua Teck, "Rukun Tetangga more effective than high fences", *New Straits Times*, 21 March 2006.

¹⁴⁷ Rosli Abdul Jalil, "Cuti ronda malam sehari", *Berita Harian*, 10 April 2006.

¹⁴⁸ M. Hamzah Jamaludin, "Day off for RT members on night patrols soon", *New Straits Times*, 10 April 2006.

¹⁴⁹ *Ibid.*

¹⁵⁰ Ninth Malaysia Plan 2006-2010, p. 312.

While many efforts are being taken to ensure that residents' associations can set up neighbourhood groups, the Department of National Unity and National Integration could only approve 150 applications annually.¹⁵¹ This is because despite receiving an overwhelming response from many residents' associations, the department lacks the financial ability to supply the monthly grants.

For that reason, financial assistance from the state governments is crucial in order to encourage the developments of neighbourhood group and neighbourhood watch in our country. The government has indeed introduced many strategies in its Ninth Malaysia Plan to promote the establishment of neighbourhood committees in our country. It is hoped that all the plans will be carried out properly by the departments involved. At the same time, residents should also take the effort to form a neighbourhood committee without depending too much on the government for funding.

4. *Extend Safe City Programme to All Cities*

With concerns raised by various quarters on the level of safety in the cities, the Ministry of Housing and Local Government launched the Safe City Programme in 1998, focusing on Crime Prevention through Environmental Design (CPTED) and Defensible Space Principles.¹⁵³ The Ministry of Housing and Local Government proposed 23 steps of crime prevention, involving several agencies such as the Royal Malaysia Police, the Town and Country Planning Department and the Malaysian Crime Prevention Foundation, as well as

¹⁵¹ "Permohonan tubuh Rukun Tetangga meningkat", *Utusan Malaysia*, 15 Mei 2005.

¹⁵³ Opening speech by Speech by Minister of Housing and Local Government on "Global And Local – The Malaysian Response to the Urban Challenge" on 7 June 2004.

the public. It incorporates three strategies through physical environment design, target hardening and social activities or public awareness through 23 steps:

FIRST STRATEGY:

Designing the physical environment

1. Separate pedestrian walkways from the road with barriers, railings and landscaping.
2. Install bollards.
3. Trimming and maintaining landscape plants along walk ways.
4. Research on crime prevention by Malaysian Human Settlement and Urbanisation Research Institute.
5. Sharing information on crime through a GIS-based mapping system.
6. Examine guidelines for housing layout plans.

SECOND STRATEGY:

Target hardening

7. More police booths.
8. Signboards warning of crime-prone areas and listing emergency numbers.
9. Putting up safety mirrors.
10. Installing alarms in public areas.
11. Clearing up undergrowth.
12. Providing locked parking lots for motorcycles.
13. Installing closed-circuit televisions.
14. Lighting five-foot ways along shop fronts.
15. Ensuring public walkways and views are not blocked.

16. Light up crime-prone areas.
17. Disallowing stalls and vehicles on the pavement.
18. Encourage business activities at strategic locations.
- 19 Private security guards for high risk areas.

THIRD STRATEGY:

Social activities and public awareness education

20. Education.
21. Lighting the back and front lanes of houses.
22. Distributing crime prevention leaflets to communities.
23. Increasing patrols in housing estates.

Among the 23 steps proposed in the Safe City Programme is to encourage the local authorities to engage the service of private security guards,¹⁵⁴ installation of alarm at public places which are easily accessible,¹⁵⁵ installation of safety mirror at strategic locations,¹⁵⁶ to encourage house owners to install lamps at the front, side and back of their houses, and to turn on their lights at night,¹⁵⁷ and to encourage frequent neighbourhood watch patrols.¹⁵⁸ The Bangsar zone was the pioneer in this Safe City Programme since 1998, and has successfully reduced the number of crimes in the area.¹⁵⁹

¹⁵⁴ Step 19 in the Safe City Programme.

¹⁵⁵ Step 10 in the Safe City Programme.

¹⁵⁶ Step 9 in the Safe City Programme.

¹⁵⁷ Step 21 in the Safe City Programme.

¹⁵⁸ Step 23 in the Safe City Programme.

¹⁵⁹ Kam, Sharon, *Loc. cit.*

Although the implementations of the Safe City Programme in major cities are still ongoing, the ideas are worth noted. However, Ministry of Housing and Local Government needs to ensure that there must be sufficient follow-up on the implementation of the programme.

5. *Safety by Housing Design*

Another proposal to be considered by the Ministry of Housing and Local Government is the introduction of guidelines on housing designs that are able to deter criminal from breaking into houses. Terrace houses are prone to be broken into by criminals, where in some cases the criminals were able to move on top on the ceiling of house to another. In drafting the guidelines, proper research by relevant agencies must be carried out and if necessary, amendments may be made to the existing laws such as to the Uniform Building By-Laws 1984 (G.N. 5178/85) and the Street, Drainage and Building Act 1974 (Act 133) to prevent crimes in housing neighbourhoods.

A research on crime prevention by housing design was carried out by University Technology MARA and several suggestions were offered on how to minimise occurrence of break-ins. Besides upgrading the specifications for door, windows and roofs, the developers and the authorities should consider abolishing the need for back lanes for terrace houses and install telephone cables underground.¹⁶⁰ Apart from that, the design of a housing scheme should enhance community living by fostering interaction at human street

¹⁶⁰ Mohamed Yusoff Abbas, Ida Noorjulianti Sugijanto, "Malaysian Housing - Crime Prevention", *Seminar on Adequate Housing – A Human Right*, Kuala Lumpur, 15 January 2004.

level rather than vehicular interaction.¹⁶¹ The implementation of such concept and design can be effective in deterring criminal from breaking into a residence and can encourage better interaction in the communities, and reduce the need for gated communities in Malaysia.

6. *Alley-Gating Instead of Neighbourhood Gating*

Alley-gating refer to the act of gating the alleys to the back of a neighbourhood. Fences are installed at the back lanes of houses and non residents are not allowed to enter the back lane. Alley-gating is different from the usual gated communities, where perimeter fencing is erected around the whole housing area and access to the neighbourhood itself is restricted.

A very significant research on the practice of alley-gating was done by Landman in her paper, *Alley-gating and neighbourhood gating: are they two sides of the same face?*¹⁶² In her paper, Landman studied the concept of alley-gating and the impact of alley-gating in reducing the number of crimes in the areas where they were installed. Her studies showed that alley-gating in Kensington, Liverpool aimed to reduce domestic burglary, demonstrated an encouraging impact on local crime prevention.¹⁶³ Another project initiated by the University of Liverpool's Department of Civic Design found that "burglaries in the

¹⁶¹ *Ibid.*

¹⁶² Landman, Karina, "Alley-gating and neighbourhood gating: are they two sides of the same face?", in *Gated Communities: Building Social Division or Safer Communities?*, Glasgow, 18-19 September 2003.

¹⁶³ Landman, Karina, *op. cit.*, p.6.

enclosed areas fell by more than 55 per cent".¹⁶⁴ Alley-gating does not have any impact on traffic patterns, does not negatively affect urban maintenance or restrict access to the public roads and facilities.¹⁶⁵

Another interesting point relating to the practice of alley-gating in Kensington is that the alley-gating was sponsored by the local council¹⁶⁶ instead of being funded and installed by the residents themselves. Perhaps, our local councils can also do the same thing here by experimenting on several non gated neighbourhoods to observe the efficacy of alley-gating in reducing crimes. If the efficacy is proven, then the government can promote alley-gating by allocating funds for its construction and also encourage developers to do their parts by erecting gates on the back lanes of houses, especially for the terrace houses. In fact, alley-gating can be introduced as one of the steps in the Safe City Programme.

7. *Ban Door-To-Door Sales*

As one of the objectives of gated communities is to protect the privacy of the residents, the government needs to protect the safety and privacy of residents in conventional housing. One type of nuisance that the residents in conventional neighbourhood have to endure is door-to-door sale by unsolicited sales agents. Most of the salespersons were trained to be persistent and persuasive. Incidents of salespersons refusing to leave the compound of a resident's house until the resident agrees to buy the product are not unheard of. In addition,

¹⁶⁴ Young, C., "The Smithdown Road Pilot 'Alleygating' project. Evaluated on behalf of the Safer Merseyside Partnership." *University of Liverpool: Department of Civic Design report*, 1999.

¹⁶⁵ Landman, Karina, *op. cit.*, p.14.

¹⁶⁶ Landman, Karina, *op. cit.*, p. 4.

There have been occurrences of people being deceived in various scams by salespersons in the Klang Valley. Not only did the residents' privacy were invaded, they suffered great financial loss as the culprits would usually supply them with low quality products and refused to return the victims' money. In 2005 alone, 1,571 cases of this type of scam were heard and disposed of at the Consumer Claims Tribunals and 1,066 complaints regarding this were lodged with the National Consumer Complaints Centre.¹⁶⁷ It is believed that thousands more goes unreported.

Since access to gated communities are restricted and controlled by the security guards, no salesperson are allowed in the area and the residents expect better privacy compared to their counterparts who live in normal, public neighbourhood. In order to resolve the problem relating to privacy of the residents for conventional neighbourhoods, the government should consider prohibiting door-to-door sale. Under s. 4(1) of the Direct Sales Act 1993, a direct sales business can be carried on if the company is registered under the Companies Act 1965 and holds a valid license under s. 6 of the same Act. Although there are requirements for the salesperson to produce his national registration identification card and his authority card when negotiating a door-to-door sale,¹⁶⁸ many of them failed to comply with the provision. It is also difficult for the Ministry of Domestic Trade and Consumer Affairs to monitor this activity as some of the companies were not even registered, and this system is open for abuse as evidenced by many scams that have been going on in our country for many years. Some residents did not even realise the existence of the Direct Sales Act 1993 and only became aware of the provisions in the said Act after they have been deceived.

¹⁶⁷ R., Sonia, "It's More Like Scratch and Lose It", *New Straits Times*, 26 April 2006.,

¹⁶⁸ Section 18 (1)(a) and (b) of the Direct Sales Act 1993.

It is my humble recommendation that the door-to-door marketing strategy should be prohibited, unless the salesperson received an invitation from a prospective buyer to come to their house. The People's Republic of China, for example, had banned all types of direct and pyramid selling in 1998 due to widespread pyramid schemes.¹⁶⁹ Prohibition of such method of sales may save thousands of people from being victimised by organised scams and such ban may also improve the safety and privacy of people of live in non-gated neighbourhoods.

J. *Offer Better Public Facilities and Improve Services and Maintenance of Public Areas*

As discussed in Chapter Two and Chapter Five of the dissertation, the residents in gated communities are willing to pay for maintenance fees in gated communities due to better provisions of facilities and infrastructure. There is also less traffic in the neighbourhoods, which increases the level of privacy for the residents and allows the children to play freely in the area. In addition, as many gated communities are of low density, they provide more open space per capita compared to conventional neighbourhoods. The facilities in gated communities are generally considered as better in terms of quality and quantity and have lower risk of being vandalised compared to facilities located outside of gated communities.

¹⁶⁹ "Crackdown on Pyramid Selling", The Star, 11 May 2006.

In addition, the residents of gated communities could expect higher standard of maintenance of facilities in gated communities compared to the level of maintenance by the local authorities in housing areas. For example, reports regarding garbage not picked up on time, broken playground equipments, vandalised public facilities and clogged drains in conventional neighbourhoods were just some of the complaints which appeared in the local newspapers. Broken facilities which are unfixed and left to decay will become useless to the public, causing a waste in the taxpayers' money. Some infrastructures such as roads are not well maintained as there have been complaints regarding uneven pot holes on the roads, damaged pavements as well as road holes caused by flash floods and heavy vehicles. These problems can adversely affect the quality of life of people who live in the areas. Any accidents or injuries caused by defect of public facilities and infrastructure invite legal suits against the relevant authorities.

In order to improve the provision for open space and facilities in conventional neighbourhoods, it is pertinent for the government to ensure that the guidelines issued by the Town and Country Planning Department of Peninsular Malaysia¹⁷² for provision of open space and facilities are adhered to by the developers. The local authorities must also ensure that the quality of facilities and infrastructures, such as playground equipments and roads in conventional neighbourhoods, are comparable with the facilities offered in gated communities.

Apart from that, the local authorities need to demonstrate better responsive attitude in responding to the public's needs and requests, particularly the requests for more

¹⁷² As discussed in Chapter Four of the dissertation.

recreational parks and facilities in strategic locations. The local councils must respond immediately to complaints regarding vandalised and broken public facilities as well as damaged infrastructures and must ensure that the facilities and infrastructures are promptly fixed. Problems such as vandalism, which usually occurred at night, can be prevented if constant monitoring is done by the police with cooperation from the residents.

The standard of maintenance in conventional neighbourhoods can also be increased by providing frequent cleaning services and constant monitoring of the facilities in open spaces in order to preserve public facilities. Moreover, well maintained recreational facilities and pavements can encourage people to exercise in their residential areas and promote a safer and healthier lifestyle encouraged by the government. If the government can deliver better services to the residents of conventional neighbourhood and display high level of commitment in improving the facilities and infrastructure for the public, the public will feel more encouraged to live in conventional neighbourhoods rather than living gated communities.

III. CONCLUDING REMARKS

The fear of crime is not the developers' fault; they were merely exploiting it. There are negative perceptions against gated community housing schemes, especially from those who are of the opinion that everyone should work together to ensure better living for the communities rather than isolate themselves from the rest. It is crucial to investigate the real

impact of gated community housing schemes in Malaysia and how are they going to affect our society in the future. While research reports on gated communities from other countries are useful, it is pertinent for the Malaysian government to study the impact of gated community housing schemes in Malaysia. As security has been observed to be one of the most important factors of gated communities' existence, the government should improve the security in our country for all citizens.

The act of legalising gated communities through the amendments to STA is seen as a response to fulfil the demands of such move from the developers and the residents of gated communities alike. The developers are only responding to the present market demand. However, legalising gated communities and encouraging people to live in gated communities without conducting proper studies can be equated with the idiom of "putting the cart before the horse". The writer is of the opinion that the act of legalising gated communities before conducting a comprehensive study on the impact of gated communities is premature. By encouraging and extending the developments of gated communities in Malaysia, the government should consider this question; should the safety and security of human beings in residential areas be privatised and limited to those who could afford it? Should security be considered as a form of luxury as opposed to a necessity? These should have been considered by the government before making a move to legalise gated communities.

It is vital that the government be one step ahead of the developers. Policies should have been formulated after a thorough study has been conducted and not the other way around. Long term planning and formulating efficient policy are very crucial in order to ensure the

public would not suffer as a result of poor land planning and land allocation. Sustainable environment, especially in urban areas can only be achieved by proper planning and urban sustainability calls for strict implementation and enforcement of policies by the authority. For these reasons, it is vital that our local authorities, through their respective planning divisions ensure that there will be adequate housing all layers of society in the future.

Developers should also learn not to over-promise and under-deliver when it comes to their developments. They should be responsible in ensuring the safety of the residents of gated communities as they are the ones who pledge to provide the house buyers with outmost safety and security.

Until the government takes an appropriate action regarding the control of gated community developments, gated communities will flourish and continue to prosper in our country. Should the government decide to control the number of gated communities in our country in the future, it is hoped that it will not be too late by then.

BIBLIOGRAPHY

BOOKS

Abdul Halim Nasir & Wan Hashim Wan Teh , *Warisan Seni Bina Melayu*, (Bangi: Universiti Kebangsaan Malaysia, 1997).

Azimuddin Bahari, *Practical Guide in Subdivision of Land and Building for Issuance of Strata Titles*, (Malaysia: Koperasi Pegawai Pentadbiran dan Pengurusan Tanah Malaysia Berhad, 2007).

Blakely, Edward J. and Snyder, Mary Gail, *Fortress America: Gated Communities in the United States*, (Washington: Brookings Institution Press, 1997).

Bradbook, Adrian J. et al *Australian Real Property Law*, (Sydney: Lawbook Co., 2007).

Bugden, Gary and Allen, Michael, *New South Wales Strata and Community Titles Law*, (Australia: CCH Australia Limited, 1991).

Butt, Peter, *Land Law*, (Sydney: Lawbook Co., 2001).

Crowther, Jonathan (ed.), *Oxford Advanced Learner's Dictionary of Current English*, (Oxford: Oxford University Press, 5th ed., 1995).

Fee, Chen Voon (ed.), *Encyclopedia of Malaysia: Architecture*, (Singapore: Archipelago Press, 1998).

Fischer, C. S., (et al.) *Networks and Places: Social Relations in the Urban Setting*, (New York: Free Press, 1977).

Frazer, Sally Anne, *Conveyancing Manual New South Wales*, (Australia: LBC Information Services, 1996).

Halim Abdullah, *Everything the Condominium Developer Should Have Told You, But Didn't*, (Selangor: Pelanduk Publications, 1992).

Heisler, Doreen and Klein, Warren, *Inside Look at Community Association Homeownership: Facts and Perceptions*, (Alexandria,: Community Associations Institute, 1996).

Hooker, M. B. (ed.), *Readings in Malay Adat Laws*, (Singapore University Press, Singapore, 1970).

Koperasi Pegawai Pentadbiran dan Pengurusan Tanah Malaysia Berhad, *A Manual on the NLC*, (Kuala Lumpur: Koperasi Pegawai Pentadbiran dan Pengurusan Tanah Malaysia Berhad, 2002).

Liaw, Yock Fang, *Undang-Undang Melaka. The Laws of Malacca*, (the Hague: Martinus Nijhoff, 1976).

Logan, J. R., "A Translation of the Malayan Laws of the Principality of Johore", *Readings in Malay Adat Laws*, (Singapore: Singapore University Press, 1970).

Low, S., *Behind the Gates: Life, Security and the Pursuit of Happiness in Fortress America*, (New York and London: Routledge, 2003).

McNair, J. F., *Perak and the Malays*, (Kuala Lumpur: Oxford University Press, 1972).

Mohd Razali Agus, *Perumahan Awam di Malaysia : Dasar dan Amalan*, (Kuala Lumpur: Utusan Publications & Distributors, 1st ed., 2001).

Muhammad Afandi Yahya, *Simbolisme Dalam Seni Bina Rumah Melayu Kelantan*, (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1995).

Norchaya Talib, "Negligence: Occupiers' Liability", *Law of Torts in Malaysia*, (Selangor: Sweet & Maxwell Asia, 2nd ed., 2003).

Rigby, J., "The Ninety-Nine Laws of Perak", *Papers on Malay Subject, Readings in Malay Adat Laws*, (Singapore: Singapore University Press, 1970).

Robinson, Leonard, *Strata Titles Units in New South Wales*, (Australia, Butterworths, 4th ed. 1989).

Stone, Margaret A., *Halsbury's Laws of Australia: Real Property*, (Australia: Butterworth's, 1998).

Teo, Keang Sood, *Hak Milik Strata di Malaysia*, (Malaysia: Dewan Bahasa dan Pustaka, 3rd ed., 1995).

Teo, Keang Sood and Khaw, Lake Tee, *Land Law in Malaysia: Cases and Commentary*, (Kuala Lumpur: Butterworths Asia, 2nd ed, 1995).

Ticehurst, Frank, *Baalman and Wells Land Titles Office Practice*, (Sydney: Lawbook Co, 5th ed., 2001).

United Nations Human Settlements Programme (UN-HABITAT), *State of the World's Cities 2008/2009: Harmonious Cities*, (London: Earthscan, 2009).

United Nations Centre for Human Settlements (UN-HABITAT), *the State of the World's Cities Report 2001*, (Nairobi: United Nations Centre for Human Settlements (Habitat), 2001).

ARTICLES

Azlinor Sufian, "A Legal Perspective on "Gated Communities" in Malaysia', (2006) 14 IIUMLJ 97.

Christudason, Alice, "Legislation Affecting Common Property Management in Singapore: Confusion or solution through fragmentation?", (2008) 26 No. 3 *Property Management*, pp. 207-219.

Eng, Toh Swee, "The Role of Licensed Land Surveyors in Expediting Title Application for Strata Title", (2002) 2 *Jurnal Tanah*, p.9.

Felson, Marcus, and Clarke, Ronald V., "Opportunity Makes the Thief: Practical Theory for Crime Prevention", *Police Research Series: Paper 98*, 1998, p.25.

Lan, Chin Sin, "Gated Communities – Legal Issues", (2004) 2 *Serlah- a Special Report for Clients of Raslan-Loong and Reeg Rechtsanwälte*, p. 7.

Lang, Robert E. and Danielsen, Karen A., "Gated Communities in America: Walling Out the World?", *Housing Policy Debate*, Volume 8, Issue 4, 1997, p.873.

"Legal Conundrum for Gated Communities", *REHDA Bulletin*, November 2005, p.1

Le Goix, Renaud, "Gated Communities: Sprawl and Social Segregation in Southern California", *Housing Studies*, vol. 20 n.2, pp.323-344.

Logan, J. R., *A Translation of the Malayan Laws of the Principality of Johore*, 9 JIAEA (1855) pp. 71-90

Kamalruddin, S., "Sustainable Land Use Development in the Klang Valley: An Elusive Dream?", *Malaysian Town Plan*, Issue 1, Volume 1, September 2005.

Kempe, John. E, Winstedt, R.O., "A Malay Legal Digest Compiled for 'Abd al-Ghafur Muhaiyu'din Shah, Sultan of Pahang 1592-1614 A.D.', [1948] *Journal of the Malaya Branch of the Royal Asiatic Society* Vol. XXI pt. 1, p. 1.

Rigby, J., "The Ninety-Nine Laws of Perak", *Papers on Malay Subject*, (ed. Wilkinson, R. J.), Law, Part II (1908) pp. 20-56.

Rondinelli, D.A., "Policies for Balanced Urban Development in Asia: Concept and Reality", (1990) 11 *Regional Development Dialogue*, pp. 23-51.

Sanisah Shafie, 'Sense and Sustainability', *Malaysian Town Plan*, Vol. 1, Issue 3, December 2004, p.63.

"Selangor revises GACOS development guidelines", REHDA Bulletin, February 2008 issue, p. 1.

Winstedt, R.O., 'Kedah Law', [1928] JMBRAS Vol. VI, pt. 11, p. 1.

Webster, Chris and Le Goix, Renaud, "Planning by Commonhold", *Economic Affairs*, Volume 25, No. 4, December 2005, p.19.

Wilson-Doenges, Georjeanna, "An Exploration of Sense of Community and Fear of Crime in Gated Communities", *Environmental and Behaviour*, Vol. 32 No. 5, September 2000 597-611, p.599.

Young, C., "The Smithdown Road Pilot 'Alleygating' project. Evaluated on behalf of the Safer Merseyside Partnership." *University of Liverpool: Department of Civic Design report*, 1999.

CIRCULARS

Circular by the Director General of Survey and Mapping, No. 2/1993 : Pelan Pra-Hitungan (Pre-Computation Plan).

Circular by the Director General of Survey and Mapping, No. 3 Year 2008 [JUPEM 18/7/2.146(11)].

THESIS / DISSERTATION

Faizal bin Kamarudin, "The Management Corporation Under the Strata Titles Act 1985: Issues Surrounding Its Establishment and Operation in the State of Penang", (LLM Dissertation, University of Malaya, Kuala Lumpur, 2006).

Norazmin Adibah binti Othman, "Kriteria Perancangan Dalam Pembangunan Perumahan Komuniti Berpagar di Kawasan Dewan Bandaraya Kuala Lumpur", (Dissertation for Master of Science in Land Administration and Development, Universiti Teknologi Malaysia, Johor, 2007).

Sazzelina bt Ismail, "Penilaian Kesesuaian Konsep 'Gated Community' Ke Atas Pembangunan 'Landed Property' di Kawasan Majlis Perbandaran Kajang", (Dissertation for Bachelor of Town and Country Planning, MARA University of Technology, Shah Alam, 2006).

PARLIAMENTARY DEBATES

Parliamentary Debate, Representative, Eleventh Parliament, Third Session, Third Meeting, 12 December 2006, p. 110 (Ong Ka Ting).

Parliamentary Debate, Representative, Eleventh Parliament, Third Session, Third Meeting, 13 December 2006, p. 61 (Ong Ka Ting).

Parliamentary Debate, Representative, Eleventh Parliament, Third Session, Third Meeting, 13 December 2006, p. 29 (Teresa Kok Suh Sim).

Parliamentary Debate, Representative, Twelveth Parliament, First Session, Third Meeting, 14 October 2008, p.5 (Dato' Seri Syed Hamid Albar).

NEWSPAPER CLIPPINGS

Ariff Khalid, "Living in gated areas while crooks go free", *Opinion* column in The Star, 22 March 2007.

Boon, Chua Teck, "Rukun Tetangga more effective than high fences", New Straits Times, 21 March 2006.

"Building Safe Neighbourhood", New Straits Times, 10 July 2004.

Cheah, S. C., "Security top priority for buyers", The Star, 29 May 2006.

Cheng, Thean Lee, "What makes a landed, gated and guarded project?", The Star, 18 April 2009.

Child rapist escapes gallows", The Star, 17 October 2008.

"Concern over gated housing projects: So-called social apartheid to be studied", The Star, 20 August 2004.

"Crackdown on Pyramid Selling", The Star, 11 May 2006.

Dass, Maria J., "Guidelines for gated communities", The Sun, 4 December 2006.

Datin Paduka Chew Mei Mei. Stuart Michael, "Chew is all for gated communities", The Star, 26 September 2006.

Datuk Seri Dr. Mohamad Khir Toyo, "Local council enforcers on bikes to help fight crime", The Star, 20 January 2008.

Dr. Raj & Dr. Pushpa, "Not so gated community", The Star, 24 March 2006.

Fernandez, Derek, "Law & Realty: Gated and Guarded Communities (Part 2)", The Sun, 6 July 2007.

Gurjit Singh, "Up Close and Personal with Gated & Guarded Communities", New Straits Times, 30 July 2005.

Hariati Azizan and Bedi, Rashvinjeet S., "No Home Sweet Home", The Star, 7 June 2009.

Harinderan, K., "It's a pie in the sky, say house buyers", New Straits Times, 2 April 2009.

"Have Laws for Gated Communities", The Star, 18 December 2004.

Kam, Sharon, "Neighbours On Guard", The Sun, 20 August 2004.

Kaur, Sharen, "PKNS: Niche products for final phase of Bandar Baru Bangi", New StraitsTimes, 18 March 2009.

Khoo, Simon, "Rakan Cop helps lower crimes in Pahang", The Star, 26 January 2006.

Lim, Chia Ying and Low, Christina, "Thieves target pedigree pets in the Klang Valley", the Star, 30 October 2008.

Lim, Lay Ying, "Paying for Peace of Mind", New Straits Times, 5 July 2003.

Lingam, K.S., "Property Management: Is this enough to protect home owners?", New Straits Times, 24 June 2009.

Mak, K. W., "Debate continues on gated community", The Star, 28 August 2004.

Mak, K.W., "Ensuring crime kept at bay", The Star, 9 October 2006.

Masami Mustaza, "Jalan Seroja's a public road, says council", The Malay Mail, 4 June 2007.

M. Hamzah Jamaludin, "Day off for RT members on night patrols soon", New Straits Times, 10 April 2006.

Morshidi Sirat, "Study needed to understand gated trend", The Star, 23 August 2004.

National House Buyers Association, "Protection from bullies", New Straits Times, 8 September 2007.

Ng, Angie, "Dilemma in low-cost housing", The Star, 11 April 2009.

"One Policeman for 649 People in KL", The Sun, 7 July 2004.

"Permohonan tubuh Rukun Tetangga meningkat", Utusan Malaysia, 15 Mei 2005.

Perumal, Elan, et al., "Lower crime rate raises interest in gated townships", The Star, 10 May 2007.

Phoon, Zoe, "Bright End to A Gloomy Start", New Straits Times, 21 February 2004.

"Poll: Most citizens concerned over high crime rate", The Star, 27 July 2009.

Prasad, Chris, "The land of gold gets richer", New Straits Times, 21 July 2007.

Rafidah Mat Ruzki, "Peragut miliki Mercedes, Perdana V6", Berita Harian, 10 Ogos 2004.

Rosli Abdul Jalil, "Cuti ronda malam sehari", Berita Harian, 10 April 2006.

R., Sonia, "It's More Like Scratch and Lose It", New Straits Times, 26 April 2006,

"Public Notice", New Straits Times, 24 April 2008.

Singh, Dharmender, "Councillor: Speed Bumps Endanger Folks", The Star Online, 23 February 2006.

Shuman, V., "Rakan Cop a big success, KL crime rate down 20pc", New Straits Times, 17 February 2006.

Soon, Ivy, "Malaysia Foresight Shows", The Star, 30 January 2005.

"SSAM completes Inquiry on Former Employer of Rapist", The New Straits Times, 18 February 2004.

"Still no strata titles after 32 long years", The Malay Mail, 20 May 2005.

"Strong interest for upmarket houses", The Star, 19 Sept 2005,

"Sunway Damansara gaining ground", The Edge, 25 February 2002.

Tan, Karr Wei, "Tropicana folks want to know status of township", The Star, 25 April 2008.

Tan, Karr Wei, "Tropicana residents draft bill", The Star, 1 July 2009.

Tan, Roger, "Law & Realty: Set up Strata Titles Board, urges Bar Council" The Sun, 20 July 2007.

"The numbers speak", The Star, 17 May 2008.

Usilappan, Mani, "Clearing doubts about management", New Straits Times, 19 June 2009.

Wong King Wai, "Oriental appeal of Jade Hills", The Edge Malaysia, Issue 747, 23-29 March 2009.

Yeong Ee-Wah, "Getting proper property valuation", The Sun, 30 March 2008.

CONFERENCE/ SEMINAR

Atkinson, Rowland and Flint, John, "Fortress UK? Gated Communities, The Spatial Revolt of The Elites and Time-Space Trajectories of Segregation", *Gated Communities: Building Social Division Or Safer Communities*, Glasgow, 18-19 September, 2003.

Azimuddin Bahari, "Regulatory and Practical Aspects of Gated Community Projects", *Seminar on Gated Community Projects: Regulatory and Contractual Issues*, Kuala Lumpur, 28 July 2005.

Azlinor Sufian, 'A Legal Perspective on "Gated Communities" in Malaysia', *Eighth International Conference of the Asian Planning Schools Association*, Penang, 11-14 September 2005.

Blandy, Sarah and Lister, Diane, "Gated Communities: (Ne)Gating Community Development?", *Conference on Gated Communities: Building Social Division or Safer Communities?*, Glasgow, 18-19 September 2003.

Briffault, Richard, 'Protecting Public Interests in the Private City', *International Conference on Private Urban Governance*, Mainz, 5-9 June, 2002.

Charmes, Eric, "Interactions with Neighbouring Others in French Periurban Areas: Barriers and Openness", *Gated Communities Conference: Building Social Division or Safer Communities*, Glasgow, 18-19 September 2003.

Cheong, Nai Cheong, "Gated and Guarded Community; Architect's Point of View", *Issues in Gated Community Housing Schemes*, Johor Bahru, 13 August 2005.

Frantz, Klaus, 'Gated Communities in US-American Cities', *Workshop Gated Communities – Global Expansion of a New Kind of Settlement*, Hamburg, December 1999.

Grant, Jill, 'Planning Responses to Gated Communities in Canada', *Gated Communities: Building Social Division or Safer Communities?*, Glasgow, 18-19 September 2003.

Habsah Hashim, "Harmonious Community Living in Urban Neighbourhoods: a Case of Central Shah Alam", *Eighth International Conference of the Asian Planning Schools Association*, Penang, 11-14 September 2005.

Glasze, Georgss "Some Reflections on the Economic and Political Organisation of Private Neighbourhoods", *Gated Communities: Building Social Division or Safer Communities?*, Glasgow, 18-19 September 2003.

Khairiah Thalha, "Project Management, Planing and Design of Strata Title and Gated Communities – A Rich Man's Abode or Future Housing for the Mass?", *Seminar on Land, Strata Title and Gated Community*, Kuala Lumpur, 3 April 2006.

Landman, Karina, "Alley-gating and Neighbourhood Gating: Are They Two Sides of the Same Face?", *Gated Communities: Building Social Division or Safer Communities?*, Glasgow, 18-19 September 2003.

Landman, Karina, "Gated Communities and Urban Sustainability: Taking A Closer Look At The Future", *2nd Southern African Conference on Sustainable Development in the Built Environment*, South Africa, 23-25 August 2000.

Landman, Karina, "Who Owns the Road? Privatising Public Space in South African Cities through Neighbourhood Enclosures", *Privatisation of Urban Space*, New Orleans, 26-27 February 2004.

LeGoix, Renaud, "The impact of gated communities on property values: evidences of changes in real estate markets (Los Angeles, 1980-2000)", *International Symposium TCE: Territory, Control and Enclosure*, Pretoria, South Africa, 28 Pebruary – 3 March 2005.

Leisch, Harald, "Gated Communities in Indonesia", *Workshop on Gated Communities as a Global Phenomenon*, Hamburg, December 1999.

Mahadi bin Che Ngah, "Garis Panduan Perancangan ke atas Pembangunan 'Gated Community': Pengalaman DBKL", *Seminar Gated Community*, Johor Bahru, 20-21 July 2005.

Mohamed Yusoff Abbas, Ida Noorjulianti Sugijanto, "'Malaysian Housing- Crime Prevention', *Seminar on Adequate Housing – A Human Right*, Kuala Lumpur, 15 January 2004.

Naude, Beaty, "Can Public Road Closure Reduce Crime Effectively?", *Seminar: Gated Communities*, South Africa, 24 March 2004.

Nizam bin Sahari, "Konsep Pembangunan 'Gated Community' di Kawasan Majlis Perbandaran Kajang", *Seminar Gated Community*, Johor Bahru, 20-21 July 2005.

Nor Azlina Sulaiman, Yasmin Mohd Adnan, "The Rising Trend of 'Gated Community' in Current Residential Development in Klang Valley", *International Conference on Sustainable Housing 2006*, Penang, Malaysia, 18-19 September 2006.

Presentation by Group One, "Definition of GACOS", *Workshop on the Gated Community Housing Schemes for the Formulation of Appropriate Legislations in Malaysia*, Shah Alam, 28-29 April 2007.

Pow, Choon-Piew, "From Public Housing to Private Neighborhoods: Gated Condominium Estates in Singapore", *Private Urban Governance : Production of Urban Spaces, Interactions of Public and Private Actors, Sustainability of Cities*, Paris, 5-8 June 2007.

Singh, Gurjit, "Trials & Tribulations of Gated Community Housing Schemes", *Issues in Gated Community Housing Schemes*, Johor Bahru, 13 August 2005.

Snyder, M. G., "Gated Communities in America: Walling Out the World?", *Planning in the Americas Conference*, Florida, 6-9 November 1997.

Tan, Bernard, "Gated Communities – The Concept and Vision", *Seminar on Gated Communities Scheme*, Kuala Lumpur, 15 September 2003.

Xavier, Grace, "Gated and Guarded Communities – Security Concerns or Elitist Practice?", *5th Asian Law Institute Conference*, 22-23 May 2008.

Yong, Yung Choy, "Legal Issues if Gated Community Projects: Default of Parties, Exclusion of Liability and Right to Common Property", *Seminar on Gated Community Projects: Regulatory and Contractual Issues*, Kuala Lumpur, 28 July 2005.

SPEECH

Datuk Seri Ong Ka Ting, official launch of Duta Tropika, 18 December 2004.

Minister of Housing and Local Government, "Global And Local – The Malaysian Response to the Urban Challenge", 7 June 2004.

Deputy Minister of Ministry of Housing and Local Government, "Problem Faced by the Real Estate Industry and Solutions", *14th National Real Estate Convention*, Kuala Lumpur, 24 March 2003.

INTERNET MATERIALS

Berjaya Corporation Berhad, "BLand carves a niche in bungalow lots", <http://www.berjaya.com/051205thestar.htm>, last date of access 24 June 2009.

Blakely, Edward J., Snyder, Mary Gail, 'Putting up the Gates', <http://www.nhi.org/online/issues/93/gates.html>, last date of access 18 May 2009.

Brudtland Commission, "Report of the World Commission on Environment and Development: Our Common Future", GA Res A/Res/42/187, 96th plen mtg, UN Doc A/42/427 (1987). Also available at <http://www.un-documents.net/ocf-02.htm#I>, last date of access 8 June 2009.

Centre for Public Policy Studies, "CPPS Policy Factsheet: Crime and Safety", http://cpps.org.my/resource_centre/Crime.pdf, last date of access 24 June 2009.

Centre for Public Policy Studies, "Policy Factsheet: Police", <http://cpps.org.my/downloads/factsheets/Police%20factsheet.pdf>, last date of access 23 June 2009.

Clarke, Ronald V., "Closing Streets and Alleys to Reduce Crime: Should You Go Down This Road?", http://www.popcenter.org/Response/response-closing_streets.htm last date of access 28 February 2006.

"Conference on improving Government's delivery system", *The Sun*, 16 April 2007, http://www.malaysianbar.org.my/news_features/conference_on_improving_governments_delivery_system_13_14_april_2007.html?date=2009-02-01, last date of access 23 March 2009.

Cubby, Ben, "Behind the Urban Curtains", <http://www.smh.com.au/news/National/Behind-the-urban-curtains/2005/03/03/1109700606439.html>, last date of access 11 February 2006.

Department of Statistics Malaysia, "Population", http://www.statistics.gov.my/eng/index.php?option=com_content&view=article&id=50:population&catid=38:kaystats&Itemid=11, last date of access 4 June 2009.

Department of Statistics Malaysia, "Population and Housing Census 2000", http://www.statistic.gov.my/English/frameset_pressdemo.php, last date of access 2 July 2005.

Department of Town and Country Planning, "Senarai Pihak Berkuasa Tempatan di Semenanjung Malaysia", <http://www.townplan.gov.my/risalah/013.pdf>, last date of access 3 November 2009.

Economic Planning Unit, Department of Statistics, Malaysia, available at Valuation and Property Services Department website, <http://www.jp-ph.gov.my/V1/pdf/OVERVIEWLPH2008.pdf>, last date of access 4 June 2009.

Economic Planning Unit, Prime Minister's Department, Mid-Term Review of the Ninth Malaysia Plan 2006-2010, p. 79, <http://www.epu.gov.my/mtr-rm9/html/english.htm>, last date of access 8 June 2009.

Economic Planning Unit, Prime Minister's Department, "Recent Economic History", <http://www.epu.jpm.my/New%20Folder/RecentEconomicHistory.htm>, last date of access 24 May 2007.

Foley, Gregory, "Ketchum prohibits gated communities", *Idaho Mountain Express*, 22 December 2004. Also available at http://www.mtexpress.com/index2.php?ID=200411477&var_Year=2004&var_Month=12&var_Day=22.

Haji Mohd Khalid Johan, 'Sejarah Penubuhan Majlis Agama Islam dan Adat Melayu Perak', http://mufti.perak.gov.my/profil/profil_utama.htm, last date of access 18 May 2009.

Haler, Peter, "Australian Field Study", the Leasehold Advisory Service, <http://www.lease-advice.org/publications/documents/document.asp?item=42>, last date of access 12 October 2009.

Halimah Ali, "Indeks Jenayah Meningkatkan: Ke Arah Negara Yang Tak Selamat", <http://drhalimahali.wordpress.com/2008/04/04/indeks-jenayah-meningkat-ke-arrah-negara-yang-tak-selamat/>, last date of access 28 April 2009.

Heavy Trash Organisation, "Heavy Trash Installs Viewing Platforms at Los Angeles Gated Communities", <http://heavytrash.blogspot.com/2005/04/april-24-2005-for-immediate.html>, last date of access 17 June 2009.

iProperty.com, "Kajang Bungalow for Sale, Country Heights, Selangor", <http://www.iproperty.com.my/property/listing.asp?pid=257394>, last date of access 24 June 2009.

iProperty.com, "Kenny Hills Bungalow for Sale/Rent, Kuala Lumpur", <http://www.iproperty.com.my/property/listing.asp?pid=310710>, last date of access 24 June 2009.

Jonas Eliasson and Mattias Lundberg, "Road pricing in urban areas", <http://www.transport-pricing.net/download/swedishreport.pdf>, last date of access 13 November 2009.

Kuala Lumpur City Council, "Kuala Lumpur Structure Plan 2020: Community Facilities", http://www.dbkl.gov.my/pskl2020/english/community_facilities/index.htm, last date of access 8 June 2009.

Kuala Lumpur City Council, "Kuala Lumpur Structure Plan 2020: Economic Base and Population", http://www.dbkl.gov.my/pskl2020/english/economic_base_and_population/index.htm, last date of access 8 June 2009.

Kuala Lumpur City Council, "Kuala Lumpur Structure Plan 2020: Housing", <http://www.dbkl.gov.my/pskl2020/english/housing/index.htm>, last date of access 8 June 2009.

Landman, Karina, 'Alley-gating and Neighbourhood Gating: Are They Two Sides of The Same Face?', in Gated Communities: Building Social Division or Safer Communities?, Glasgow, 18-19 September 2003.

LaCour-Little, Michael, and Malpezzi, Stephen, "Gated Communities and Property Values", Scientificcommons website, <http://www.bus.wisc.edu/realestate/pdf/pdf/Private%20Streets%20Paper%20June%202001.pdf>, last date of access July 2009.

Malaysia, Department of Statistics Malaysia, *Population*, 31 July 2009 http://www.statistics.gov.my/eng/index.php?option=com_content&view=article&id=50:population&catid=38:kaystats&Itemid=11, last date of access 4 October 2009.

Malaysia Most Wanted Property, “Winduri Villas , 3 & 2.5 Storey Bungalow @ Country Heights, Kajang, Selangor”, <http://property.malaysiamostwanted.com/projects/winduri-villas-2-5-storey-bungalow>, last date of access 24 June 2009.

Malaysia Property & Real Estate, “Country Heights Bukit Impiana 2, Kajang”, http://www.property.net.my/Listing/Semi_Detached_House/516.html, last date of access 24 June 2009.

Malaysia, The Economic Planning Unit, Prime Minister's Department, *Chapter Eleven: Enhancing Human Capital, Ninth Malaysian Plan*, (2006), p. 250.

Media Prima 2004 Operations Review,
<http://www.mediaprima.com.my/pdfs/2004/2004Operations.pdf>, last date of access 1 May 2009.

Media Prima 2007 /Operations Review,
http://www.mediaprima.com.my/pdfs/2007/MPB07_operationreview.pdf, last date of access 1 May 2009.

“Media Prima 2008 Operations Review”,
<http://www.mediaprima.com.my/pdfs/2008/operationreview09.pdf>, last date of access 1 May 2009.

Millard, Hal L., “Asheville City Council: Council narrowly approves partisan city elections”, *Mountain Xpress*, 20 June 2007. Also available at <http://www.mountainx.com/news/2007/062007city>.

Ministry of Housing and Local Government, “Corporate Info”,
http://www.kpkt.gov.my/kpkt_en/main.php?Content=vertsections&SubVertSectionID=26&VertSectionID=4&CurLocation=4, last date of access 21 May 2009.

Ministry of Housing and Local Government, “Local Agenda 21 Pilot Project”,
<http://www.kpkt.gov.my/jkt/la21/eng/index.asp>, last date of access 8 June 2009.

MSN Encarta Dictionary, *gated community*, 2009,
http://encarta.msn.com/dictionary_561547178/gated_community.html. Last date of access 13 January 2009.

Nasser, Haya El, 'Gated Communities More Popular, and Not Just For The Rich', USA Today, http://www.usatoday.com/news/nation/2002-12-15-gated-usat_x.htm, last date of access 18 May 2009.

National House Buyers Association, Complaints Statistic2 – Year 2001, http://www.hba.org.my/HBA/Statistic/complaints_2001.htm, last date of access 3 September 2009.

National House Buyers Association, "Regulation the way to go", http://www.ppkm.org.my/valuers_act/regulation.htm, last date of access 21 March 2009.

N'Dow, Wally, "United Nations Conference on Human Settlements (Habitat II) Press Release", <http://www.un.org/Conferences/habitat/unchs/press/women.htm>, last date of access 31 May 2009.

NSW Department of Lands, Registrar General's Directions, "Advantages of Community Schemes", <http://rgdirections.lands.nsw.gov.au/communityschemes/advantagesofcommunityschemes>, last date of access 17 January 2007.

NSW Department of Lands, Registrar General's Directions, 'Legislative Base To Community Schemes', <http://rgdirections.lands.nsw.gov.au/communityschemes/thecommunityschemeconcept/legislativebasetocommunityschemes>, last date of access 17 January 2007.

NSW Department of Lands, Registrar General's Directions, 'Planning Site Development', <http://rgdirections.lands.nsw.gov.au/communityschemes/developmentofacomcommunityscheme/planningsitedevelopment>, last date of access 24 January 2007.

NSW Department of Lands, Registrar General's Directions, "Tiered Subdivision", <http://rgdirections.lands.nsw.gov.au/communityschemes/thecommunityschemeconcept/whatisacomcommunityscheme/tieredsubdivision>, last date of access 17 January 2007.

Nuarrual Hilal Md. Dahlan, "Penipuan Sijil Arkitek dan Jurutera Dalam Kerja-Kerja Pembinaan Projek Perumahan", <http://nuarrualhilal.wordpress.com/category/housing-law/>, last date of access 27 March 2009.

Office of the High Commissioner for Human Rights, "International Human Rights Law", <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>, last date of access 4 June 2009.

Office of the High Commissioner for Human Rights, "International Law", <http://www2.ohchr.org/english/law/>, last date of access 4 June 2009.

O'Sullivan, Matt, 'Behind the urban curtains', <http://www.smh.com.au/news/National/Behind-the-urban-curtains/2005/03/03/1109700606439.html#>, last date of access 18 May 2009.

Perunding Eagles, "Security system in gated community", http://www.pece.com.my/p_gated_valencia.html, last date of access 21 July 2009.

"Police to Population Ratio", <http://usj18.nwatch.net.my/article.cfm?id=152>, last date of access 10 October 2004.

Portal eHome, Ministry of Housing and Local Government, <http://ehome.kpkt.gov.my/ehome/ehomebi/laporan/perangkaan.cfm>, last date of access 26 July 2009.

Rakan Cop, 27 February 2007, Malaysian Royal Police. <http://www.rakancop.net>, last date of access 27 February 2007.

"Research Network: Private Urban Governance and Gated Communities", <http://www.gated-communities.de/>, last date of access 24 June 2009.

Residence123.com, "Bungalow \ At Tijani 2 North, Kenny Hills", http://www.estate123.com/residence/property_search/details.aspx?key=06052008084300PM2026179531, last date of access 24 June 2009.

Residence123.com, "Tropicana Golf & Country Club", http://www.estate123.com/residence/property_search/details.aspx?key=29112008013532PM1550999594, last date of access 24 June 2009.

Sejarah Bangunan Muzium Adat Istiadat DiRaja Kelantan', Perbadanan Muzium Negeri Kelantan, http://kelantan.muzium.net/v2/index.php?option=com_content&task=view&id=19&Itemid=55, last date of access 15 May 2009.

Sekolah Menengah Kebangsaan Engku Husain, 'Sejarah Semenyih', http://smeh.tripod.com/sj_pkml.htm, last date of access 18 May 2009. GS Teleconsult, <http://www.gforsberg.ws/gst/experience1.htm>, last date of access 21 July 2009.

“Spotlight: Gated and guarded concept comes to Klang”, <http://www.theedgedaily.com/cms/contentPrint.jsp?id=com.tms.cms.article.Article 21282>, last date of access 2 December 2007.

The Urban Development Institute of Australia NSW, “Common Ground – UDIA NSW Community title Principles”, <http://www.udia-nsw.com.au/resource/Common%20Ground-UDIA%20NSW%20Comm%20Title%20Principles.pdf>, last date of access 12 October 2009.

Tropicana Golf and Country Resort, <http://www.tropicanagolf.com/properties/index.html>, last date of access 19 June 2009.

Tropicana Golf & Country Resort, “Overview”, <http://www.tropicanagolf.com/properties/index.html>, , last date of access 24 June 2009.

UN-HABITAT, “The Habitat Agenda”, http://ww2.unhabitat.org/declarations/habitat_agenda.asp, last date of access 8 June 2009.

United Nations Office on Drugs and Crime, “The 10th United Nations Survey of Crime Trends and Operations of Criminal Justice Systems (10th CTS, 2005-2006)”, <http://www.unodc.org/documents/data-and-analysis/Malaysia.pdf>, last date of access 24 June 2009.

United Nations Human Settlements Programme (UN-HABITAT), “The Housing Crisis”, http://www.unhabitat.org/documents/media_centre/ghs/GRHS05F2.pdf, last date of access 31 May 2009.

Valuation and Property Services Department website, “Data Jualan Harta Tanah 2008”, p. 53, <http://www.jp-ph.gov.my/V1/pdf/OVERVIEWLPH2008.pdf>, last date of access 4 June 2009.

Valuation and Property Services Department website, “Residential Property Stock Report Q1 2009”, p. 4, <http://www.jp-ph.gov.my/V1/pdf/q109residential.pdf>, last date of access 7 June 2009.

Valuation and Property Services Department, "The Malaysia House Price Index by House Type",

http://www.jp-ph.gov.my/V1/index3service.php?versi=2&no_khidmat=3&no_item=9, last date of access 21 July 2009.

Victoria Transport Policy Institute, "Road Pricing Congestion Pricing, Value Pricing, Toll Roads and HOT Lanes", <http://www.vtpi.org/tdm/tdm35.htm>, last date of access 11 November 2009.

APPENDIX 1

QUESTIONS ARISE FOR RESIDENTS OF GATED COMMUNITIES

QUESTIONNAIRE FORM

1. NAME:

☐ Mr

☐ Ms

☐ Other

☐ Other

☐ Other

2. AGE:

☐ 18-23

☐ 24-29

☐ 30-35

☐ 36-40

☐ 41-45

☐ 46-50

APPENDIX 1

QUESTIONNAIRE FOR RESIDENTS OF GATED COMMUNITIES

3. YOU ARE THE

☐ Owner

☐ Tenant

4. YOUR PROFESSION

☐ Self-employed

☐ Employed by

Private Sector

☐ Government Employee

☐ Unemployed

Housewife

5. NATURE OF YOUR JOB

☐ Professional

Executive and

☐ Non-executive

Lower level

☐ Unemployed

RESEARCH ON GATED COMMUNITY DEVELOPMENTS IN THE KLANG VALLEY

CANDIDATURE FOR MASTER OF LAWS (LL.M) DEGREE

QUESTIONNAIRE FORM

1. RACE:

☐ Malay

☐ Chinese

☐ Indian

☐ Others

☐ Foreigner

2. AGE:

☐ Below 20

☐ 20-29

☐ 30-39

☐ 40-49

☐ 50-59

☐ 60 & above

3. YOU ARE THE:

☐ Owner

☐ Tenant

4. YOUR PROFESSION:

☐ Self-employed

☐ Employed by

Private Sector

☐ Government Employee

☐ Unemployed/

Housekeeper

5. NATURE OF YOUR JOB: ☐ Professional: _____

(please tick and

☐ Non-professional: _____

state your job)

☐ Business: _____

☐ Others: _____

6. HOUSEHOLD INCOME: ☐ RM 2000 and below

(monthly)

☐ RM 2001 - RM 5000

☐ RM 5001 – RM10,000

☐ RM 10,001 – RM 15,000

☐ RM 15,001 – RM 20,000

☐ RM 20,001 – RM 25,000

☐ RM 25,001 – RM 30,000

☐ RM 30,001 – RM 50,000

☐ RM 50,001 – RM 100,000

☐ RM 100,000 and above

7. HOUSEHOLD SIZE:

☐ 1-3 persons

☐ 4-6 persons

☐ 7-10 persons

☐ more than 10 persons

8.

PREVIOUS

RESIDENCE:

9. PLEASE RATE YOUR REASON FOR CHOOSING TO LIVE IN A GATED COMMUNITY

(1=the most important factor, 9= the least important factor)

☐ Amenities

- ☐ Exclusivity and Status
- ☐ Neighbourhood Environment
- ☐ Privacy
- ☐ Private Maintenance
- ☐ Property Value / Investment
- ☐ Security
- ☐ Sense of Community
- ☐ Traffic Reduction

10. YOUR REASONS FOR CHOOSING THIS PARTICULAR GATED COMMUNITY

(1=the most important factor, 11= the least important factor):

- ☐ Amenities
- ☐ Exclusivity and Status
- ☐ Location
- ☐ Neighbourhood Environment
- ☐ Privacy
- ☐ Private Maintenance
- ☐ Property Value / Investment
- ☐ Security
- ☐ Sense of Community
- ☐ Traffic Reduction
- ☐ Others : (please state) _____

11. ARE YOU SATISFIED WITH THE: (please tick ✓ or ✕)

- ☐ Amenities
- ☐ Exclusivity
- ☐ Location
- ☐ Maintenance
- ☐ Neighbourhood Environment
- ☐ Price
- ☐ Privacy
- ☐ Property Value
- ☐ Security
- ☐ Sense of Community
- ☐ Traffic

12. DO YOU INTEND TO SELL THE PROPERTY LATER?

- ☐ Yes ☐ No ☐ Unsure

13. IF YES, WHEN?

Possibly within _____ years

14. WOULD YOU LIKE TO BE ABLE TO CHOOSE YOUR NEIGHBOURS (ie screen your future neighbour in the community)?

- ☐ Yes ☐ No

15. DO YOU OFTEN VISIT OR INVITE YOUR NEIGHBOURS OVER?

☐ Yes, approximately _____ times a month.

☐ No, I rarely.

☐ Never.

16. HOW OFTEN DO YOU TALK TO YOUR NEIGHBOURS?

☐ Almost everyday.

☐ Once a week.

☐ Once a month.

☐ Never.

17. DO YOU THINK YOUR RELATIONSHIP WITH YOUR NEIGHBOUR IS SATISFACTORY?

PLEASE STATE THE REASON(S) OF YOUR ANSWER.

☐ Yes

☐ No

Because _____

18. DOES YOUR COMMUNITY HAVE ANY RESIDENT ASSOCIATION?

☐ Yes

☐ No

19. WOULD YOU CONSIDER BUYING / LIVING IN OTHER GATED COMMUNITY IN THE FUTURE?

☐ Yes

☐ No

20. ARE YOU SATISFIED WITH THIS GATED COMMUNITY?

☐ Yes

☐ No

Why?

21. ANY SUGGESTIONS REGARDING GATED COMMUNITY?

22. WOULD YOU RECOMMEND OTHERS TO LIVE IN A GATED COMMUNITY?

☐ Yes

☐ No

Thank you for your co-operation.

APPENDIX 2

**PHOTOS OF D'VILLA DAMANSARA EQUESTRIAN,
LOCATED IN KOTA DAMANSARA,
PETALING JAYA, SLEANGOR**





APPENDIX 3

PHOTOS OF SRI BUKIT PERSEKUTUAN

LOCATED IN KUALA LUMPUR





APPENDIX 4

**PHOTOS OF DUTA NUSANTARA,
LOCATED IN SRI HARTAMAS, KUALA LUMPUR**





APPENDIX 5

PHOTOS OF BUKIT KIARA RESIDENCES

LOCATED IN SRI HARTAMAS, KUALA LUMPUR





APPENDIX 6
PHOTOS OF DUTA TROPIKA,
LOCATED IN SRI HARTAMAS, KUALA LUMPUR



APPENDIX 7
PHOTOS OF TROPICANA INDAH RESORT HOMES
LOCATED IN KOTA DAMANSARA,
PETALING JAYA, SELANGOR



APPENDIX 8
PHOTOS OF SELANGOR POLO COUNTRY CLUB,
LOCATED IN KOTA DAMANSARA,
PETALING JAYA, SELANGOR



APPENDIX 9

**PHOTOS OF TROPICANA GOLF AND COUNTRY RESORT,
LOCATED IN PETALING JAYA, SELANGOR**

