

# UNDERSTANDING STRATIFIED PROPERTY AND LEGAL REMEDIES UNDER THE STRATA MANAGEMENT ACT 2013

## What is a Stratified Property?

“Stratified property” refers to a property development where the land is divided into individual units or parcels. Common examples include apartments, condominiums, and landed homes within guarded communities.

Stratified developments come with “common property” which are those parts of the development that are not comprised in any parcel and are capable of being used or enjoyed by more than one resident<sup>1</sup>. For example, the swimming pool or the gym.

In Malaysia, stratified developments are governed by the Strata Management Act 2013 (“**SMA 2013**”). The SMA 2013 was enacted to provide a legal framework for the proper maintenance and management of stratified developments and their common property<sup>2</sup>.

## Who is Responsible for the Maintenance and Management of Stratified Developments and Their Common Property?

### **A. Developer**

Initially, the responsibility for the maintenance and management of stratified developments and their common property lies with the developer. The developer’s responsibility period, known as the “developer’s management period”, is the

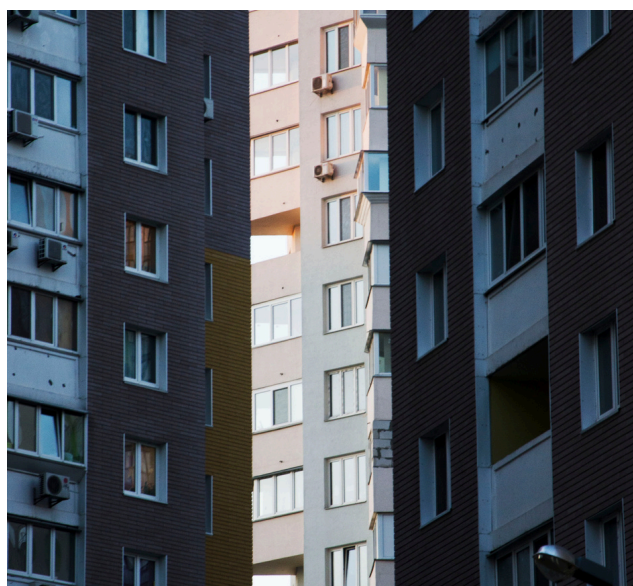
period commencing from the date of delivery of vacant possession until one month after the establishment of the joint management body<sup>3</sup>.

During this time, the developer has the duty and power to collect maintenance fees and contributions to the sinking fund<sup>4</sup>.

The maintenance fees are used, amongst others, for maintaining and cleaning the common property and taking out insurance over the building<sup>5</sup>. The sinking fund, on the other hand, is used, amongst others, for buying movable property and fixtures for use in the common property<sup>6</sup>.

### **B. Joint Management Body (“JMB”)**

The developer’s management period ends one month after the establishment of the temporary management entity known as the JMB.



[1] See definition in section 2 of the Strata Management Act 2013 (“**SMA 2013**”)

[2] See Preamble, SMA 2013

[3] See section 7, SMA 2013

[4] See section 9(2)(a) and (b) and 9(3)(a) and (b), SMA 2013

[5] See section 10(4)(c), SMA 2013

[6] See section 11(4)(c), SMA 2013



The JMB is established upon convening the JMB's first annual general meeting ("AGM"). The AGM must be convened not later than twelve months from the date of delivery of vacant possession<sup>7</sup>.

Thereafter, the duties of maintenance and management are passed on by the developer to the JMB<sup>8</sup>.

### C. Management Corporation ("MC")

Once 25% of the strata titles have been issued, the developer must, within one month, convene the first AGM of the MC<sup>9</sup>.

Not more than one month from the date of the MC's first AGM, the JMB shall hand over all monies, accounts, and documents relating to and necessary for maintenance and management to the MC<sup>10</sup>. Thereafter, the duties of maintenance and management are passed on to the MC. The JMB is dissolved three months from the date of the MC's first AGM<sup>11</sup>.

## Common Breaches

During the management period of the developer, JMB, and/or MC, various forms of actionable mismanagement may arise. Common examples are discussed below:

### 3.1 | Failure to Maintain Common Property

The developer, JMB, and MC all have statutory duties under the SMA 2013 to ensure the proper maintenance and upkeep of common property<sup>12</sup>. Examples of failure to maintain common property include:

- Failure to properly maintain and service a sewerage pipe, resulting in the pipe bursting and discharge from then pipe damaging furniture and equipment in a condominium unit<sup>13</sup>.
- Failure to replace sealant material which has deteriorated over time at construction movement joints, resulting in water leakage at the joints<sup>14</sup>.
- Failure to maintain the central cooling system and failure to clean public toilets<sup>15</sup>.



[7] See section 17, SMA 2013

[8] See section 21, SMA 2013

[9] See section 57(1), SMA 2013 read with definition of "initial period" in section 46(2), SMA 2013

[10] See section 27(2), SMA 2013

[11] See section 27(1), SMA 2013

[12] For Developer see section 9, SMA 2013; For JMB see section 21, SMA 2013; For MC see section 59, SMA 2013

[13] See *ACN Infra Sdn Bhd v Perbadanan Pengurusan & Anor* [2019] MLJU 1849

[14] See *Dua Residency Management Corporation v Edisi Utama Sdn Bhd & Anor* [2021] MLJU 140

[15] See *Perbadanan Pengurusan 3 Two Square v 3 Two Square Sdn Bhd & Anor and another civil* [2019] MLJU 1983. This case concerned the Strata Titles Act 1985, the predecessor to the SMA 2013.



### 3.2 | Financial Mismanagement and Misuse of Funds

As mentioned above, the developer is duty-bound to collect maintenance fees and contributions to the sinking fund. This duty is then passed on to the JMB and subsequently to the MC<sup>16</sup>.

All three bodies must also oversee and manage these accounts transparently. This includes preparing financial statements and audited accounts<sup>17</sup>.

Any mismanagement, misappropriation, or misuse of funds can be challenged. For example, if officers of the JMB fail to present audited accounts and fail to demonstrate how the monies collected from homeowners are kept and accounted for<sup>18</sup>.

### 3.3 | Unjustified or Excessive Fees

Homeowners should remain vigilant about their maintenance fees and sinking fund contributions to ensure they are not being overcharged.

Under the SMA 2013, maintenance fees and sinking fund contributions are determined by the developer, JMB, and MC<sup>19</sup>. Maintenance fees are determined in proportion to the allocated share units of each parcel, and sinking fund contributions are usually equivalent to ten per cent of the maintenance fees<sup>20</sup>.

Purchasers are entitled to request a certificate certifying the amount of maintenance fees and sinking fund contributions payable by them<sup>21</sup>. Purchasers who are unsatisfied with the maintenance fees and sinking fund contributions determined by the developer may apply to the Commissioner of Buildings ("**COB**")<sup>22</sup> or the Strata Management Tribunal ("**SMT**")<sup>23</sup> for a review.

Legal proceedings may also be brought in court. For example, a parcel owner may challenge a JMB for charging sinking fund contributions on a per square foot basis instead of on a share unit basis<sup>24</sup>.

### 3.4 | Unfair or Illegal By-Laws

The developer, JMB, and MC have the power to make and enforce by-laws to regulate the control, management, administration, use, and enjoyment of common property. These by-laws may cover areas such as safety and security measures, parking regulations, and/or fines or penalties for breach<sup>25</sup>.

However, any wrongfully enacted or enforced by-laws can be challenged. For example:

- A by-law requiring any parcel owner who initiates litigation against the MC to reimburse all legal fees and costs in the event they lose the suit, can be nullified as (i) such a by-law is not for a purpose prescribed by the SMA 2013, which is for the proper management and maintenance of the development area, and (ii) the recovery of legal fees and costs is a judicial matter, outside the purview of a MC<sup>26</sup>.
- A by-law imposing a daily fine of RM200.00 for each day the infringement continues can be struck down, as the SMA 2013 only allows for a one-off RM200.00 fine<sup>27</sup>.
- By-laws introduced without a special resolution, as required by the SMA 2013, are void<sup>28</sup>.



[16] For Developer see sections 9, 10, 11 and 15, SMA 2013; For JMB see sections 21, 23, 24 and 27, SMA 2013; For MC see sections 59, 60 and 61, SMA 2013

[17] For Developer see section 14, SMA 2013; For JMB see section 26, SMA 2013; For MC see section 62, SMA 2013

[18] See *Perbadanan Pengurusan The USJ 19 City Mall & Anor v Tiow Weng Theong & Ors and another case* [2021] MLJU 2919

[19] For Developer see sections 9(2)(a) and (b), SMA 2013; For JMB see sections 21(1)(b) and (c), SMA 2013; For MC see sections 59(1)(b) and (c), SMA 2013

[20] See sections 12(3) and (4), 25(3) and (4) and 52(2) and (3), SMA 2013

[21] See section 31(a), SMA 2013

[22] See section 12(7), SMA 2013

[23] See sections 105(1), 107 and Part 1 of the Fourth schedule, item 1, SMA 2013

[24] See *Sime Darby Brunsfield Damansara Sdn Bhd v Oasis Corporate Park JMB* [2024] MLJU 1123

[25] For Developer see sections 9(2)(g), 32(2), SMA 2013; For JMB see sections 21(1)(h), 21(2)(g) and (h) and 32(3), SMA 2013; For MC see sections 59(1)(h), 59(2)(g) and (j) and 70(2), SMA 2013

[26] *Perbadanan Pengurusan Bersama Main Place & Ors v Loke Yeu Ling & Ors* [2024] MLJU 2762

[27] See *Innab Salil & Ors v Verve Suites Mont Kiara Management Corp* [2020] 2 MLJ 163

[28] See *John Denis de Silva v Crescent Court Management Corp* [2006] 3 MLJ 631. This case concerned section 44 of the Strata Titles Act 1985, the predecessor to section 70(2), SMA 2013.

## **Legal Remedies**

Under the SMA 2013, various legal remedies are available to address mismanagement of stratified developments and their common property.

### **(a) Engaging with the COB**

The COB is the regulatory authority responsible for administering the provisions of the SMA 2013<sup>29</sup>.

The COB has various powers, such as the power to:

- (i) Investigate the commission of any offence under the SMA 2013. The Commissioner or an authorised officer carrying out investigations may exercise all powers of a police officer of whatever rank in relation to police investigation in seizable cases as provided under the Criminal Procedure Code<sup>30</sup>.



- (ii) As mentioned above, to review and determine maintenance fees and sinking fund contributions.
- (iii) Appoint any person to convene the first AGM of the JMB or the MC if the developer fails to convene the same<sup>31</sup>.
- (iv) Appoint a managing agent to carry out the duties and powers of the developer, JMB or MC if, upon a complaint made, the COB finds that the maintenance and management of the stratified development is not carried out satisfactorily by the developer, JMB or MC<sup>32</sup>.
- (v) If a claim is made against the Common Property Defects Account, to issue a notice to a developer requiring the developer to rectify defects<sup>33</sup>.

### **(b) Filing a Claim with the SMT**

The SMT is a tribunal set up specifically to resolve strata-related disputes in a cost-effective and timely manner.

Developers, purchasers, proprietors, JMBs, MCs, and other interested persons, with leave of the SMT, are entitled to file a claim with the SMT<sup>34</sup>.

The SMT has jurisdiction to hear and determine any claims specified in Part 1 of the Fourth Schedule of the SMA 2013 (where the total amount sought does not exceed RM250,000.00)<sup>35</sup> such as:

- the failure to exercise a duty or power under the SMA 2013.
- a claim for recovery of maintenance fees or sinking fund contributions.
- a claim for an order to convene a general meeting.
- a claim for an order to invalidate proceedings of a meeting where any provisions of the SMA 2013 have been contravened.
- a claim for an order to revoke amendments to by-laws.
- a claim for an order to affirm, vary, or revoke the COB's decision.

[29] See section 4, SMA 2013

[30] See section 125(1) and (4), SMA 2013

[31] For JMB see section 18(5), SMA 2013; For MC see section 57(5), SMA 2013

[32] See section 86, SMA 2013

[33] See sub-regulation 50 and 51, Strata Management (Maintenance and Management) Regulations 2015

[34] See section 107, SMA 2013

[35] See section 105(1), SMA 2013



After a hearing, the SMT has the power to issue awards which carry the force of a court order<sup>363940</sup>. A SMT award may order, amongst others:

- a party to pay a sum of money to another party.
- the rectification, setting aside, or variation of a contract or additional by-laws, wholly or in part.
- costs of not more than RM5,000.
- interest at a rate not more than 8% per annum<sup>37</sup>.

A dissatisfied party may challenge a SMT award in the High Court on grounds of serious irregularity<sup>38</sup>.

(c) Pursuing legal action in Court

Pursuant to Section 106(1) of the SMA 2013, where a claim is filed with the SMT and the claim falls within the SMT's jurisdiction, the issue in dispute shall not be the subject of court proceedings, unless the court proceedings were filed first or the claim before the SMT is withdrawn, abandoned, or struck out.

If Section 106(1) does not apply, developers, JMBs and MCs can be sued in court.

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[36] See section 120(1)(b), SMA 2013

[37] See Part 2 of the Fourth Schedule to the SMA 2013

[38] See section 121(1), SMA 2013