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Separate quit rent billing on strata titles a reality?

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Strata titles application

It is a requirement of every land office throughout Peninsular Malaysia that quit rent has to be paid up to the time of application for strata titles. This is provided for in Section 9(e) of the Strata Titles Act, 1985.

As long as the quit rent is not paid in full, subdivision of any building into strata titles cannot be processed by the land office. It is, therefore, pertinent that parcel owners should galvanise their representative group under JMB status to have periodical dialogue with their developers, or their appointed managing agents, and to make independent checks at the land office in the vicinity where their property is situated. As long as the strata titles are not applied for by the developers, they will never be issued by the land office who have often been blamed for the inordinate delays.

Lawyer's dilemma

In a situation where separate strata titles are available for distribution to the parcel owners, the lawyer appointed by the owner will undertake the said transmission through the requisite memorandum of transfer (MoT) prescribed under the National Land Code, 1965 for effectual transfer from the developer (transferer) to the buyer (transferee).

Similarly, it is the policy of every land office that quit rent receipt must be produced at the registration counter (of the land office) as evidence that the quit rent has been paid up to the current year before they are able to accept the MoT for registration. Registration fees are also payable at the time of

presentation.

Often, the lawyers are caught in a Catch-22 situation that thwarted registration of the MoT, where some stubborn developers will be uncooperative and refuse to heed their complaints for an expeditious settlement of the quit rent so as to facilitate transfer of their strata titles. Among the excuses are the following:

- > Some of the owners have not paid up their contribution of quit rent;

- > The developer is purportedly appealing against the re-adjustment of those rates;

- > The penalties imposed by the land office, on delayed payment of quit rent, are unjust as they have to apportion the penalties to those parcel owners paid after the cut-off date i.e. May 31; and

- > Since the last day to pay the quit rent to the land office is May 31, why pay early when the developer can utilise those collected funds for some other purposes? There is nothing in it for them to facilitate the MoT registration.

The phenomenal growth of stratified building in recent years has posed new challenges to the law and in practice. Legislation has to be amended and re-amended to keep pace with such development. Amendments were made to the Strata Titles Act 1985 in 2007 which among other things, brought into operation the computerisation system for strata titles.

With the computerisation system of strata titles came provisions that relate to the forms, the procedures for preparation and registration of the title, dealing in parcel and entry or endorsement, memorial and modification.

The said amendments have been

in force since April 12, 2007 for Peninsular Malaysia. One of the pertinent amendments is the deletion of Section 43 (1)(j) of the Strata Titles Act, 1985 that relates to "duties and power of the managing corporation" to "pay the rent of the lot".

The "lot" here refers to the master (parent) title prior to subdivision. All the foregoing translates to the fact that it is possible to have separate billing of quit rent (land revenue) on the "individual parcel" i.e. strata titles instead of the "lot".

Why then is separate quit rent billing not done by the land offices? Is there a lacuna in the law? If so, why hasn't something been done? What have the authorities done for the past eight to nine years to give it clarity?

Let's get practical

For many years, the National House Buyers Association (HBA) has expressed its frustration of the ills of not having separate quit rent billing even though we have separate strata titles. It doesn't make sense to have one without the other.

If there is a "mistake", why don't the authorities do something about it instead of letting the rakyat suffer? Surely, eight or nine years is long enough to attend to something as simple as "one quit rent bill for one parcel property"!

The HBA has had several dialogues with Pemudah's Focus Group on Registration of Property (FGRP) (<http://www.pemudah.gov.my>) committee helmed by Datuk Andy Seo and co-chaired by Datuk Sallehuddin Ishak (the newly appointed director-general of JKPTG) and the outcome of the

meetings look positive and forward looking.

The major obstacle, that is the mindset of the government agency is now behind us because of the encouragement from Chief Secretary to the Government Tan Sri Ali Hamsa.

It is envisaged that the positives that will be conceived from these efforts would be the following:

- > There will, henceforth, be separate billing of quit rent to individual parcel owners similar to the assessment rates (to ratepayers) billed by the local council;

- > This enables payment of annual quit rent on individual parcels and not on the entire lot;

- > Quit rent on the common property too will be apportioned by the land office and incorporated into the separate quit rent bill;

- > The system change for separate billings will be made effective beginning next year on a clean platter (meaning "zero account");

- > Quit rent arrears prior to the year ending 2016 will have to be the burden of the developer or JMB (joint management body) or MC (management corporation), as the case may be, to procure collection from those delinquent parcel owners; and

- > Billings will be to the nearest ringgit.

We sincerely hope that there will be no change of heart to thwart the smooth application of strata titles.

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SCENARIO A: For 15 years, more than 50 owners of 90 condominium units diligently contributed their share of quit rent, apportioned by the developer's surveyor, to their developer.

They were shocked when they made checks at the Wilayah Land Office and discovered that their developer had somehow used their portion of payment towards arrears that had accumulated to RM114,432 between 2005 and 2013. This figure does not take into account the quit rent for the current year and the late penalty that was imposed by the related land office. More shocking was that the penalty levied was quite a hefty sum over and above the arrears.

(Note: It is a policy of every land office that quit rent (land rent) has to be paid yearly, not later than May 31, failing which a penalty of 10% will be levied.)

To rub salt into their wound, the now defunct developer, when approached by the owners/buyers, informed them that they have not pursued recovery through legal means, against those recalcitrant unit owners who have not paid their share of the quit rent.

Will those law-abiding owners then have to pay the apportioned penalties imposed by the land office against their defaulting developer, for failure to effectively collect from those recalcitrant owners? It is only fair that portion of penalties be borne by the developer! Perhaps, this situation allows the developer the very excuse that they are, thus, unable to apply for strata titles.

Scenario B: I have paid my apportioned quit rent of RM55 to the JMB/MC but other co-owners have not. My transfer of strata title to my son cannot be registered by the related land office because the total quit rent payable on the master title is RM19,500 and has not been paid. The fact that others failed to pay have thwarted my transfer of strata title. That's not fair!