

**THE ISSUES OF STRATA TITLE DEVELOPMENT IN MALAYSIA AND AUSTRALIA  
A COMPARISON FOR FUTURE DIRECTION**

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**Tesis ini dikemukakan sebagai memenuhi  
syarat penganugerahan ijazah Sarjana Sains  
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## PENGHARGAAN

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## ABSTRACT

Property development in Malaysia has undergone changes in response to the needs and demands of property purchasers. Traditionally a house is purchased for shelter of the whole family. However today property purchasers are looking for a sense of community and meaningful lifestyle beyond satisfying their safety and security needs. Housing developers are subscribed to principal of communal governance to ensure the continuous harmony of the environment within the clusters of neighborhoods. The Strata Titles Act 1985 year is constantly under review to meet the changes and demands in property markets from time to time. The Act is originally used for high rise development but recently property developers used the Act for application of strata bungalow and terrace houses. (The Star 17<sup>th</sup> June 2002) See Appendix I & II Flexibility and options are important especially in a big property development. The writer is looking into community titles which has been widely practiced in a more matured property market in Australia. The community titles provides a less restrictive or rather more options in the management of property, for examples, multi tiered management, non-contiguous lots of land and etc. With the introduction of these communal titles, many problems related to strata can be resolved or reduced significantly. It is hope that in the near future the legislation of community titles which gives a high degree of flexibility can be introduced in Malaysia so that more innovative, quality and better values of housing products will be created by housing developers to meet consumers' demand.

This study is to identify the problems that arise as a result of the inadequacy of the provisions in the Strata Title Act. The survey from the various government officers, developers and professional surveyors reveals that there is a strong need of additional legislation to bridge the gap between the conventional land code and the Strata Title Act. The study is to cover an existing Strata Title Act legislation, the community titles scheme which have been widely practiced in states of Western Australia, New South Wales and Queensland. The writer had to make comparisons in some of the areas of these legislations. At the end of this study, the writer had proposed certain recommendations to government as guidelines in trying to implement new concept of community titles in Malaysia. Among others, the writer propose to adopt some key features in some of the community title schemes in Australia.

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## CHAPTER 1 - INTRODUCTION

### 1.1 STRATA TITLE ACT 1985

Strata Titles Act has been introduced since 1985 and it has been in existence for more than 18 years. There were three recommendations for amendments of the Act since it was introduced mainly in 1990, 1996 and 2001. The Housing Developers Association feels it would be best to start a new enactment that is far sighted enough to reform the existing law governing stratified properties instead of a short sighted and unsatisfactorily “ piece meal approach” which means cosmetic changes in bits and pieces as and when the situation arises.

The Australia community titles have been introduced to cater for the changing nature of modern strata developments and to provide more relevant and flexible options in the resolution disputes. The housing schemes can be a duplex, a residential unit block, high rise accommodation complex, a shopping complex or a business park. A body corporate which is a legal entity is created to establish a community titles scheme.

To sum it up the present Strata Titles Act is not flexible and limited in offering for housing developer's needs. There has been a flowing stream of complaints (The Star 29<sup>th</sup> June 2002, See Appendix III) from purchasers of strata parcels regarding the problems of management corporations, unresolved disputes, unclear responsibilities and duties of every parcel owners, lack of provision for subdivision of a single storey building for strata titles and etc.

## 1.2 PROBLEMS STATEMENT

Housing developers are producing an innovative and new housing products which follow the trend and needs of property purchasers. The Strata Titles Act 1985 is not able to cope with the demand of the market such as gated community, security, exclusive use of vacant areas, etc. Many complaints and problems are received from various sources regarding the strata titles. The problems can be due to technical, administrative, financial and social. There are unresolved and lengthy disputes between parcel owners and management corporation. The Act given powers to Pejabat Tanah Dan Galian in every state to resolve the matters. However the PTG is just a statutory body processing strata titles and may not be competent to handle disputes like these. The planning authority is not well versed with provisions of Strata Titles Act and as a result they would not approve property development with new innovative product which has no precedent cases (News Straits Times 23<sup>rd</sup> Nov 2003 See Appendix IV).

### Identifying Issues

Various issues are identified and to be discussed as follows:

- 1.2.1 Handling disputes between parcel owners themselves and parcel owners with management corporation. Lack of competent personnel in managing dispute cases.
- 1.2.2 Delay in issuance of strata titles. Cause and effect.
- 1.2.3 Strata Titles Act has limitations and not flexible. For example, all single storey buildings within a lot is not capable to be subdivided as the Act allows subdivision of buildings if at least one building having two storey within a lot. Need new requirements.
- 1.2.4 Management Corporation having problems managing strata schemes. One lot must have only one management corporation. Difficulty in collection of maintenance fees and arrears, lack of understanding of duties and powers of parcel owners, formation of a few management corporation within a strata scheme. Requires strata education.

The study is to identify problems caused by limitations and inflexible provision in the Strata Titles Act and the recent years' emergence of a new trend in gated community, the writer decided to undertake a study to identify the cause of this problems. With the findings the writer will propose recommendations to minimize the problems by using alternative legislation.

The alternative legislation is based on community titles which has been widely practiced in various states in Australia. The writer will study in depth the provisions in the Act which provide community titles to resolve their problems and to meet current trend needs in Australia. It is natural for us to re study and understand the new Act being introduced in a mature property market in Australia and traditionally our Act was emulated from New South Wales, Australia.

It is the hope of the writer from this study it will help enrich the knowledge and understanding of community titles to substitute for the existing Strata Titles Act in the future.

### **1.3 PROJECT OBJECTIVE**

A set of objectives have been laid out as follow

- 1.3.1 To review the issues of the Strata Titles Act
- 1.3.2 To review the community titles schemes in Western Australia, Queensland and New South Wales, Australia.
- 1.3.3 To make comparisons between the Strata Title Act and the community title schemes in the state of Western Australia, Queensland and New South Wales, Australia.

### **1.4 PROJECT SCOPE**

There are a number of issues that can be highlighted in the strata title development ranging from legislation, administration, financial ,social etc. This project will try to limit its scope of study in issues pertaining to some limitations and inflexibility of the Strata Titles Act.

There is a strong demand by innovative developers for an alternative legislation to cater for community titles schemes.

As far as the community titles is concerned, not many studies has been done in this area. The Ministry of Land and Mines had visited Queensland, New South Wale and Western Australia to understand and study the mechanism and legislations which have been practiced in these states. Seminar has been organized by PEJUTA with the collaboration with the Ministry of Land and Mine to educate and to get feedback regarding the community titles schemes. Judging from the response from various professionals and housing developers, community title schemes is the trend that should not be overlooked.

The study will limit to the community legislations in New South Wales, Western Australia, Queensland and the issues of Strata Title Act Malaysia to cater for this new concept of community living.

## **1.5 PROJECT METHODOLOGY**

To fulfill the objectives that had been laid out, appropriate steps will have been taken so as all data obtained are clear and precise. In short the research methodology can be divided into four stages. These stages are planning, data collection, analysis and proposal stage in Chart 1.1 (See Appendix V).

### **1.5.1 Planning Stage**

At this initial stage, the research proposal formulated a statement of need. At the same time, based on the issues raised, the objectives, project scope and research methodology will be laid out in order to allow the writer to collect data that are relevant to the research made.

### **1.5.2. Data Collection Stage**

For the purpose of this research, the writer will be using the primary data by interviewing developers, land surveyors, Directors Of Survey Departments and officers in charge of strata

titles at land offices in the states of Wilayah Persekutuan , Selangor and Pulau Pinang. The application of strata titles for these three states constituted about 82% of the total number of application in Malaysia (see Appendix IX)

There are many high rise properties in Malaysia which do not have strata titles yet. It is a much debated and heated topic and therefore urgent attention is required to expedite the application and process of strata titles. Interviews with relevant personalities will also be made to establish the reason why it was so. These personalities will give us some insight of the strata title development as well as community titles. Secondary data is obtained from the sources such as text books, magazines, seminar papers, reports, and government published circulars, newspaper reports, relevant existing Acts and other sources.

#### 1.5.3 Analysis Stage

This is the most critical and important stage of the project. All findings and analysis from the research should be able to identify issues laid out in the objectives of the project.

We are also looking into three states in Australia which practice strata title which eventually leads to community titles.

#### 1.5.4 Conclusions Proposal And Recommendation Stage

At this stage, a number of proposal will be made based on the studies done on different states in Australia. The writer will summarized all the findings and recommendations made when concluding the study at the end of this dissertation.

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