

**STRATEGIES FOR PREVENTING THE PREMATURE AND FAULT  
CERTIFICATION OF HOUSING DEVELOPMENT PROJECT**

**YONG KUM WENG**

A project report submitted partial fulfillment of the requirements for the award  
of  
Master of Science (Urban and Regional Planning)

**FACULTY OF BUILT ENVIRONMENT  
UNIVERSITI TEKNOLOGI MALAYSIA**

**JANUARY 2012**

## **DEDICATION**

This project is dedicated to my beloved mother Koong Po Leng  
and  
my Australian parents Valda King-Siem and Dr. Bruce King-Siem

## ACKNOWLEDGEMENT

Throughout the years that I have studied the prescribed education courses for urban and regional planning, I have developed a certain way of thinking based on modern environmental attitudes, which allowed me to gain an awareness of the overall environmental picture, particularly as it relates to public housing development projects.

I am grateful for this unique opportunity to gain so much knowledge and learning notwithstanding that I struggled with the very limited research information available in the public domain. In order to understand the complex nature of the public housing development problems, and absorb the practical and theoretical aspects of the progress certification system, I have had the opportunity for the creation of new ideas. All my learning has been focused upon translating it into better urban planning laws for Malaysia.

This research thesis has proved to be an extremely demanding exercise in extending my knowledge and skills in solving problems associated with the wide spread Premature and Fraudulent Certification in the “public housing project” Industry. Malaysia is a developing country and currently experiences a housing ‘boom’. In keeping with global trends, its city populations are growing rapidly and so is the urgent need for large scale urban housing developments.

This thesis proposal is my solution to create an optimum design in providing the very basic requirements necessary for the Housing Certification System and its Certifier’s role and responsibly. Hopefully the outcome will be instrumental in eliminating most of the problems currently facing a purchaser when buying a new home.

To be able to achieve a satisfactory Certification System, I took into account key aspects of the background of the Housing Development Act and Regulation, as well as the role and responsibilities of the architect. In addition I analyzed the certification responsibilities of the accredited Certifier and the architect's fee collection problems within the public housing project's organization.

I could not honestly claim to be able to solve all the problems of the housing Certification procedures, but I have demonstrated that, by proposing solutions and ideas aimed at preventing Premature and Fraudulent Certification within the current system, can be profitable for the architect, developer, government and ultimately the home purchaser.

In this process I have come to understand the essence of housing development knowledge and realized my goal to learn and increase my understanding of its complexities. Particularly I have come to understand that the future is compelling, that I am part of this future and that. I, as an urban planner cum architect, have a unique contribution to make to society.

I realize also that my proposed solutions must be styled as appropriate to the specific needs and life style expectations of my future career. This research thesis addresses and reflects that consideration.

## ABSTRACT

The Housing Development (control & licensing) Act 1966 (Act118) with its delegated relevant Regulations, were enacted to control the contractual outcomes of public housing developments and housing agreement dispute. Based on this legal administrative framework are the Sale and Purchase Agreement (S&P) that set out the many various respective rights, duties and obligations that bind the parties to the building development contracts commonly administered by the therein nominated project architect. As the nominated architect is, under the auspices of the Pertubuhan Architect Malaysia (PAM), duty bound to competently, fairly and impartially direct and, resolve in the first instance, all queries and conflicts, the architect is procedurally deemed fully equipped to fulfill these duties.

This research seeks to identify potential major pitfalls and loop-holes associated with the administration of public housing projects. The development contracts are governed by the Housing Development (control & licensing) Act 1966 and the Housing Developers (Control and Licensing) Regulations 1989. The identification of these issues will be of particular value to the relatively inexperienced architects having to deal with very experienced contract and regulations administrators. Particularly, these research outcomes seek to equip the inexperienced architect with the skills necessary to recognize the dangers of one or more of the contractual parties seeking to pressure the architect to make premature determinations and to issue 'obvious' fault certification.

**Keywords:** Housing Development Act, Regulation, Premature and Fault Certification.

## ABSTRAK

Akta Pembangunan Perumahan (kawalan & pelesenan) 1966 (Act118) yang termaktub dengan peraturan-peraturan berkaitan, telah digubal untuk mengawal hasil kontrak pembangunan perumahan awam dan pertikaian perjanjian perumahan. Berdasarkan rangka kerja pentadbiran undang-undang perjanjian Jual Beli (S&P) yang menetapkan pelbagai hak yang berkenaan, kewajipan dan obligasi yang menghugungkan pihak kepada kontrak pembangunan bangunan yang secara amanya ditadbir oleh arkitek projek yang dilantik. Sebagai arkitek yang dicalonkan, di bawah naungan Pertubuhan Arkitek Malaysia (PAM), wajib bertindak cekap dengan adil dan saksama, menyelesaikan pada peringkat awal semua pertanyaan dan konflik, secara prosedur arkitek disifatkan telah bersiap sedia untuk memebuhi tugas-tugas ini.

Kajian ini bertujuan untuk mengenal pasti kesulitan utama dan kelemahan yang berkaitan dengan pentadbiran projek perumahan awam. Kontrak pembangunan dikawal oleh Akta Pembangunan Perumahan (Kawalan & Pelesenan) 1966 dan Peraturan Pemaju Perumahan (Kawalan & Pelesenan) 1989. Mengenal pasti isu-isu ini akan menjadi kemahiran utama kepada arkitek yang agak kurang berpengalaman yang perlu berurusan dengan kontrak yang sangat penting dan peraturan-peraturan pentadbir. Secara Khususnya hasil penyelidikan ini bertujuan untuk melengkapkan arkitek yang tidak berpengalaman dengan kemahiran yang perlu untuk mengenal pasti daripada pihak-pihak berkontrak yang ingin memberi tekanan kepada arkitek untuk membuat penilaian yang pra-matang dan untuk mengeluarkan sijil kesalahan yang "ketara".

**Kata kunci:** Akta Pembangunan Perumahan, Peraturan, pra-matang dan sijil kesalahan.

## TABLE OF CONTENTS

<b>CHAPTER</b>	<b>TITLE</b>	<b>PAGE</b>
	DECLARATION	iii
	DEDICATION	iv
	ACKNOWLEDGEMENT	v
	ABSTRACT	vii
	ABSTRAK	viii
	TABLE OF CONTENTS	ix
	LIST OF TABLES	xv
	LIST OF FIGURES	xvii
	LIST OF APPENDICES	xix
<b>1</b>	<b>INTRODUCTION</b>	
	1.0 Background	1
	1.1 Background of Housing Development Act 1966	2
	1.2 Housing Development Progress	2
	1.3 Problem Statement	4
	1.4 Significant of Study	6
	1.5 Aim and Objective of Study	7
	1.6 Organization of Study	8

<b>2</b>	<b>LITERATURE REVIEW: SETTING THE SCENE AND THE REGULATORY ENVIRONMENT</b>	
2.0	Introduction	9
2.1	History of Housing Development	9
2.1.1	Housing Policy During British Colonial Period (1948-1960)	10
2.1.2	Housing Policy After Malaysian Independent (1961-1970)	11
2.2	Role and Responsibility of Architect	13
2.3	Certification by Certifier	14
2.4	Architect's Responsibility for Certification	16
2.5	Certifier Role: Independent, Fairness and Impartially	17
2.6	Certifier's Liability under Building Contract	19
2.7	Liability of Certifier under Housing Development Act	20
2.8	Housing Development Problems	21
2.9	Abandonment of Housing Development	23
2.10	Regressive Laws Govern Housing Development	25
2.11	Relevant Laws Which Govern the Housing Development	26
<b>3</b>	<b>METHODOLOGY: SURVEY AND ANALYSIS OF THE CERTIFICATION PROBLEMS</b>	
3.0	Introduction	29
3.1	Architect's Role in Construction Industry	32
3.1.1	Architect's Role as Master Builder	33
3.1.2	Architect's Role in Building Construction	34
3.1.3	Certification Power of an Architect	35



3.2	Liability of Certifier	36
3.2.1	Indemnity insurance for certifier	38
3.2.2	Liability of purchaser economy loss	39
3.2.3	Liability of fault certification	40
3.2.4	Liability of workmanship	41
3.3	Certifier's Roles and Responsibilities in the Housing Development Project	42
3.3.1	Certify of Completion Work	43
3.3.2	Non Certification Guideline in the Housing Development Act.	44
3.3.3	Not Familiarized with the Certification Role	45
3.3.4	Board of Architects Malaysia (LAM) Produce Certification Guideline	46
3.3.5	Certifier Is a Developer Advisor	47
3.4	Technical Issue Of Stage Certification	49
3.4.1	Certify Completion Of Structure Framework	50
3.4.2	Certify Completion Of Internal And External Finishes	51
3.4.3	Certification Of Vacant Possession	52
3.4.4	Handing Over Vacant Possession	53
3.5	Architect's Fee For Housing Development Project	54
3.5.1	Lower Fee Justifies A Lower Professional Service	55
3.5.2	Fraudulent Certification	56
3.5.3	Developer Exploited Certifier	57
3.5.4	Stakeholder Collecting Architect Fee	58
3.6	Summary of Chapter	59

<b>4</b>	<b>FINDINGS AND DISCUSSION</b>	
4.0	Introduction	60
4.1	The Act Confers Certification Power to Architect	60
4.2	Salient Points of Housing Development Act 1966	61
4.2.1	Background	61
4.2.2	Part I- Interpretation	62
4.2.3	Part II- Prohibition Against Housing Development Except for Virtue of a License	62
4.2.4	Part II- Application and Renewal of Housing Developer License	63
4.2.5	Part II- Conditions or Restriction for a Grant of a License	63
4.2.6	Part III- Duties of a Licensed Developer	64
4.2.7	Part III- Audit	64
4.2.8	Part IV- Investigation and Enforcement	64
4.2.9	Part V- Controller to Report the Conduct of an Architect and Engineer	64
4.2.10	Part VI- Offences, Penalties and Right of Appeal.	64
4.2.11	Part VII- Powers of the Minister to Make Regulations	64
4.3	Salient points of Housing Developers (Control and Licensing) Regulations 1989	65
4.3.1	Background	65
4.3.2	Regulation 5- Advertisement and Sale Permit	66
4.3.3	Regulation 11, Contract of Sale	65
4.4	Understanding the Condition of Sale And Purchase Agreement	67
4.4.1	Clause 4- Schedule of Payment	69

4.5	Schedule G - Standard Sale and Purchase Agreement for Land and Building	71
4.5.1	Clause 12- Position and Area of the Lot	71
4.5.2	Clause 13- Material and Workmanship to Conform the Description	71
4.5.3	Clause 14- Restriction Against Variation By Purchaser	72
4.5.4	Clause 15- Restriction Against Change Of Color Code	73
4.5.5	Clause 20- Compliance With Written Law	74
4.5.6	Clause 21- New Laws Affecting Housing Development.	74
4.5.7	Clause 22- Time for Delivery of Vacant Possession.	75
4.5.8	Clause 23- Manner of Delivery of Vacant Possession.	75
4.5.9	Clause 25- Defects Liability Period	77
4.6	Schedule H– Standard Sale and Purchase Agreement for Sub-divided Building	78
4.6.1	Clause 11- Separate Document Of Title/ Transfer Of Title.	78
4.6.2	Clause 12- Position And Area Of The Parcel	79
4.6.3	Clause 14- Restriction Against Variation By Purchaser	79
4.6.4	Clause 18- Payment of Service Charges	80
4.6.5	Clause 21- Payment Of Out-Goings	80
4.6.6	Clause 27- Completion Of Common Facilities	80
4.7	Sequence of Housing Development Progress	81

<b>5</b>	<b>CONCLUSION AND RECOMMENDATIONS</b>	
5.0	Introduction	84
5.1	Conclusion and Recommendation	84
5.2	Comprehensive Certification Guideline	85
5.3	Guideline of Managing Housing Development Projects	103
5.3.1	Step To Be Taken Before Commencement of Construction Work	103
5.3.2	The Quantum Of Unit Or Block To Be Certified	105
5.3.3	Certify The Progress Payment For Government Loan	106
5.3.4	Step To Be Taken During Construction	106
5.3.5	Managing The Modification Of Constructional System	107
5.3.6	Other Recommended Administrative Works	107
5.4	Proposed of Mechanism for LAM as a stake holder to collect the housing development consultation fees on behalf of architect.	110
5.4.1	The Proposed Procedures to LAM as Stakeholder	112
5.5	General Conclusions	116
	<b>REFERENCES</b>	118
	<b>APPENDICES</b>	129

## LIST OF TABLES

<b>TABLE NO</b>	<b>TITLE</b>	<b>PAGE</b>
Table 5.1	Guideline on the third schedule [clause 4(1)] of the standard Sale and Purchase Agreement for landed property and building under the <b>Schedule G of Housing Development Regulation</b>	87
Table 5.2	Guideline on the third schedule [clause 4(1)] of the standard Sale and Purchase Agreement for subdivided and multi storey building under the <b>Schedule H of Housing Development Regulation</b>	95
Table 5.3	Proposed step for Stage Completion Certifications.	109
Table 5.4	Sample of Appointment Service Agreement For Housing Project	112
Table 5.5	Description of architect's fee on each phase	113
Table 5.6	Proposed of signing off-confirmation form	114
Table A	Comparison Between Standard Building Contract and Sale and Purchase Agreement	124
Table B	Number of General Complaints Received by Government in year 2000	125
Table C	Statistical No of Abandoned Housing Projects Reported by the Government as at December 2000	126
Table D	Housing Development Complaints against Architects	126

Table E	Statistical No of Purchasers' common Complaints Against the Architects	127
Table F	Sub-Schedule of Schedule G and Schedule H in S&P Agreements	127

## LIST OF FIGURES

<b>FIGURE NO.</b>	<b>TITLE</b>	<b>PAGE</b>
Figure 2.1	Resettlement of Chinese communities in New Villages	10
Figure 2.2	Low-cost housing development.	12
Figure 2.3	Houses abandoned in Kempas Johor Bahru.	22
Figure 3.0	Methodology of survey and analysis of the certification problems in housing development projects	31
Figure 3.1	Architect's Role in Construction Industry	32
Figure 3.1.1	Architect's Role As master builder	33
Figure 3.1.2	Architect's role in building construction	34
Figure 3.1.3	Certification Power of an Architect	35
Figure 3.2	Liability of Certifier	36
Figure 3.2.1	Indemnity insurance for certifier	38
Figure 3.2.1a	Statistic of Certification Problem	38
Figure 3.2.2	Liability of purchaser economy loss	39
Figure 3.2.3	Liability of fault certification	40
Figure 3.2.4	Liability of workmanship	41
Figure 3.3	Certifier's Roles and Responsibility in Housing Development Project	42
Figure 3.3.1	Certify of Completion Work	43
Figure 3.3.2	Non Certification Guideline in the Housing Development Act	44
Figure 3.3.3	Not Familiarizes With the Certification Role	45
Figure 3.3.4	Board of Architect Malaysia (LAM) Produce Certification Guideline	46

Figure 3.3.5	Certifier Is a Developer Advisor	47
Figure 3.4	Technical Issue of Stage Certification	49
Figure 3.4.1	Certify Completion of Structure Framework	50
Figure 3.4.2	Certify Completion of Internal and External Finishes	51
Figure 3.4.3	Certification of Vacant Possession	52
Figure 3.4.4	Handing Over Vacant Possession	53
Figure 3.5	Architect's Fee for Housing Development Project	54
Figure 3.5.1	Lower Fee Justifies a Lower Professional Service	55
Figure 3.5.2	Fraudulent Certification	56
Figure 3.5.3	Developer Exploited Certifier	57
Figure 3.5.4	Stakeholder Collecting Architect Fee	58



**LIST OF APPENDICES**

APPENDIX	TITLE	PAGE
1	<i>SENARAI HITAM PEMAJU PERUMAHAN YANG TERLIBAT DENGAN PROJEK TERBENGGALAI SEHINGGA 30 SEPTEMBER 2011.</i>	129
2	<i>STATISTIK KESELURUHAN PROJEK-PROJEK PERUMAHAN SWASTA BERMASALAH (LEWAT DAN SAKIT) SEHINGGA 30 JUN 2011.</i>	129
3	<i>SENARAI HITAM PEMAJU PERUMAHAN YANG TERLIBAT DENGAN KATEGORI PROJEK SAKIT SEHINGGA 30 SEPTEMBER 2011.</i>	129
4	<i>SENARAI PEMAJU YANG TERLIBAT DENGAN PEMAJUAN PERUMAHAN TANPA LESEN SEHINGGA 30 SEPTEMBER 2011.</i>	129
5	<i>SENARAI PEMAJU GAGAL MENJELASKAN KOMPAUN SEHINGGA 30 SEPTEMBER 2011.</i>	129
6	<i>SENARAI PROJEK PERUMAHAN SWASTA SAKIT SEHINGGA 30 JUN 2011.</i>	129

## **CHAPTER 1**

### **INTRODUCTION**

#### **1.0 Background**

The housing Industry sometimes seems to age with a kind of doomed grace - it constantly bleeds from its original intrinsic value as its monetary worth slowly spirals downwards. Similarity with an air of factual nostalgia one can glaze at the people of the post-war economic boom period (Wee, 2009). After the independence of Malaysia, the federal government rapidly launched a nation-wide physical industrialization and urbanization re-structuring plan aimed at improving the nation's living environment and improving the incomes for all people. Many previously reserved forest and agriculture lands were opened up to build new capital cities, suburbs and metropolitan centers to accommodate the increasing population and its attending economy growth (MURP, 2011) .

While these national housing development plans enshrine Malaysia's basic living requirements and economy growth for the population, it also outlines a purely statistical understanding of human need (MURP, 2011). Although during this period there were not many laws governing housing developments, many firms (developers) were established to construct new houses for home buyers and property investors. Some of these housing developments were successfully completed and delivered to the home buyers. However some failed, causing many housing purchasers to lose their life saving as they still had to pay for their abandoned homes. Below are some of the reasons causing these housing project failures:

1. Loop-holes in the housing laws,
2. One-sided agreements and term of sales which favored the developer
3. Most people were unfamiliar with housing development processes (Aun, 2010a)
4. Unfamiliar with certification procedures (Aun, 2010a)
5. Malaysia's economy downturn (Dahlan, 2006)
6. The bureaucracy of some government departments.

To address these problems, it appears that all housing developments need to be governed with concise and comprehensive laws. To achieve this end, the government must develop a comprehensive housing development system and enforce all developers and consultants to strictly comply with it.

### **1.1 Background of Housing Development Act 1966**

The government enacted the Housing developer Act 1966 as a reference or a benchmark for all housing development matters such as:

To provide for the control and licensing of housing development businesses in Peninsular Malaysia, protection of the interest of purchasers and for all matters connected therewith. After several amendments of the Act which were debated in parliament in 1973, 1989, 1991 and 2002 (Kasi, 1998), the name of the Housing Developer Act was revised to Housing Development (control & licensing) Act 1966 (Act118), Subsequently this Act was divided into five components as follows:

1. Housing Development (Control & licensing) Act 1966 (Act 118).
2. Housing Development (Control & licensing) Regulations 1989
3. Housing Development (Housing Development Account) Regulations 1991
4. Housing Development (Tribunal for Homebuyer Claims) Regulations 2002
5. Housing Development (Compounding of Offences) Regulations 2002

## 1.2 Housing Development Progress

The housing development process from inception to completion stage with Certificate Fitness and Occupation (CFO) is a tremendously complicated procedure. For example, if a developer bought vacant agriculture land intending it for a housing development, he must engage a town planner to prepare a development planning report plus an layout plan for submission to the planning authority for approval. Upon receiving planning approval he must then, under the National Land Code, apply for the Surrender and Re-alienation approval for converting the agriculture land into a building category and its subdivision into unit lots. After the land matters are settled, he must then apply, under Housing Development Act, for a developer's license for this housing project before he attempts to launch the houses to the public.(Woo, 2001) In addition, the developer usually engages an architect as the principal submitting party to design the building layout and prepare the building plan submission for the local authority's approval. He normally engages also other consultants such as C&S engineer and M&E engineer to prepare technical housing structures and services drawings, for submission to the relevant authorities(Woo, 2001). When the building plans and other building technical approvals are released by the local authorities the housing construction can commence: usually construction of the works proceed in stages, from the foundation stage until the building is completed with the connection of the hydraulics and electricity, finishing with the CFO.

The developer needs to promote and sell his houses before the completion of construction work (sell then build). The purchasers signs a standard Sale and Purchase Agreement (S&P) as stated in the Housing Development Regulation. Under this agreement the developer is entitled to claim, from the purchasers, a stage work completion payment which must be supported with the architect's stage certificate (Kasi, 1998). The Regulations confers this certification power on the developer's architect which means that, the architect is expected to impartially assess certify the progressive completion of the works (Kasi, 1998). The purchaser is then obliged to pay the developer in accordance with the stage certificate.

However, this certification procedure has been a major problem in most housing developments since these certification powers have been mis-used by many

architects and subsequently, has caused premature and fraudulent certification problems (Shukor, 2002). The purchaser has to pay whatever monies are subsequently claimed in accordance with the stage completion certificate, even when the building works are far from reaching the completion stage, or the housing project works are suspended or even abandoned. These problems ultimately caused an omnipresent dilemma to the public and the government. Consequently the government had little choice but to pay a tremendous price to resolve this matter.

### **1.3 Problem Statement**

The mis-use of the architect's certification power has already become a the major issue in housing projects, as many complaints came from the government, purchasers and the public at large regarding the premature and fraudulent certifications (Shukor, 2002). According to the Board of Architect Malaysia's statistics regarding housing complaints about the architects, certification complaints have risen to 108 (53%) since 1999 (Aun, 2010b). This is the highest category of all complaints in housing projects such as, defect work, delays in taking vacant possession and delay in obtaining Certificate of Fitness and Occupation (Aun, 2010b).

As a fully accredited professional, the scope of an architect's involvement in housing development disputes is inevitable given the additional responsibilities of a certifier under the Housing Development Act and Housing Development Regulation. Certain duties and responsibilities are entrusted to him, in particular the certification roles in the Sale and Purchase Agreement between the developer and the purchaser (Woo, 2001). As such, he is expected to be fair to both parties and carry out his duties competently. In contrast, the developer understands his projected monetary limits and his financial backers expect the projected profit margins, so the developer tried to prevail upon the architect to issue premature or inaccurate certification in order to claim unwarranted monies. Distortions such as understated or inflated progress claims from the purchasers are often procured by offering very common inducements. i.e. if the architect wished to get a next phase of the housing project, he will collaborate in favoring the developer.

Often the architect, especially a newly graduated architect, is not fully aware of his legal responsibilities and its scope of duties (Teng, 1998). The Ministry of Housing and Local Government (MHLG) 2010 statistics shows that 30,860 purchasers have suffered financial loss due to 150 failed housing developments which involved 48,331 house units being abandoned. Worse still, while some housing projects have been abandoned (Teng, 1998), the purchasers still is obliged to pay the stage progress billing payments (in accordance to the architect's stage certificates).

After the Board of Architect Malaysia (LAM) investigation, several other interesting reasons were discovered, in that most architects felt the Scale of Minimum Fees under the Architect Rules 1996 prescribed for housing projects, is far too low for the work and responsibility involved (Mohamed, 1987). Furthermore, the developer quite often pays lower than the prescribed minimum fee.

As a professionally qualified person it is reasonable to expect a certain level of remuneration for services rendered based on the belief that every human work place activity should be profitable. Therefore, the minimum of consultation fees for the absolutely minimum level of professional services is expected to be in the public's best interest (Mohamed, 1987). i.e. many architects dare not to proceed to the periodically site inspection stage before certifying the completion works. In some cases they even delegate their duty to some other parties to certify the completion works on behalf of them (Shukor, 2002). But why then do architects still accept the lower fee for the housing project? This is simply because in securing their own architectural business; they have no alternative but to accept the unfair consultation fee from their developer client. Moreover, many architects are unfamiliar with ramifications of the stage certification role, possibly due to the Housing Development Act and Regulation which does not have a clear and specific certification guideline. There is no governmental reference here which would allow architects to faithfully discharge their duty diligently, nor does it endeavor to encourage architects to acquire sufficient knowledge and experience to deal with the vagaries of a housing project. Subsequently, architects are being routinely exploited by the developers' insistence to issue premature and fraudulent certificates. Consequently many architects now tend to shy away from undertaking housing projects, even when the proposed housing is a

social necessity with many housing projects currently being launched by a lot of developers (Kasi, 1998).

Beside the major complaints of certification problems, they are still many other common defect problems being experienced and complained about by the purchasers. i.e. late delivery of vacant possession to the purchaser and defective workmanship.

#### **1.4 Significant of Study**

In the average architect's office, a residential housing project usually provides at least half of the workload noted in the architect's timesheet (Teng, 1998). The risks involved in undertaking a housing project are so significant to an experienced architect that they show a marked preference for accepting non-housing projects. This is understandable, especially when considering the work load involved in any housing project far out weights remuneration (Mohamed, 1987). Professional reputation once lost is almost impossible to regain and any complaints (justified or not) to the Pertubuhan Akitek Malaysia (LAM), Board of Architects Malaysia (LAM) and Ministry of Housing and Local Government (MHLG) invariably leads to litigation.

This study is significant as it seeks to address the need for architects involved in housing projects in Malaysia, to be familiar with the 'stage' Certification role and its attendant legal ramifications. This study also investigates salient features within the Housing Development Act and Regulation, its background and development over the last decade and how it applies to the various stages of a housing development from inception through to completion. As such, the core problems are investigated and a comprehensive strategy developed to protect the purchaser's financial interests. Hopefully an improved policy would deliver to the purchasers their wonderful dream home. An improved strategy would be capable in assisting architects to educate themselves on the responsibilities of Certification thus enabling them to discharge their professional duties effectively and also to protect themselves against unwelcome litigation.

## **1.5 Aim and Objective of Study**

The study's aim is to identify the core causes of the problem of premature and fault certification under the S&P Agreement, Housing Development Act and Regulation. It will do so by referring to all available sources including PAM and LAM, House Buyer Association, REHDA, MHLG, housing development controller, local authority, Malayan Law Journal, Malaysian Law on Housing Development, Professional Architect Practice Note and any other statutory requirements. Moreover, the aim is also to review the architect's Condition of Engagement and Architect Rule 1996 in order to identify the problem of the developers' use the "common inducements" exploiting the architect's economic needs in breach of his ethics by accepting below scale consultation fees and in consequence providing lower consultation service to the purchasers. In order to further identify the certification problem, a deeper understanding of the following points shall be studied:

1. Housing Development History.
2. certifier's role and responsibility.
3. All statutory laws and acts which relate to housing developments.
4. Housing Development Act (the aim & objective).
5. The procedures of certification.
6. the sequence of Housing Development Progress.
7. The principal aim and objective of the Sale and Purchase Agreement (Schedule G and Schedule H).



## **1.6 Organization of Study**

This thesis is divided into 5 chapters as follow:

Chapter 1, provides a general introduction of the housing development issue and the certification problem in housing development in Malaysia. The description will provide the back ground, problem statement, significant of study and aim of objective of the study.

Chapter 2, review the background, information, news and any other articles in respect of the housing development, history certification problem, Role and Responsibility of certifier, the problem of housing development and the relevant laws and regulations.

Chapter 3, the methodology is developed a questionnaire to survey and analysis the problems of housing development, certifier's role and responsibility, architect fee in housing project.

Chapter 4, finding and discuss the relevant elements of housing certification procedure, as well as discuss the salient point of Housing Development Act, Housing Development regulation and the Sale & Purchaser. Hence, discuss the architect is a most suitable professional to be empowered as a certifier under the Act and Regulation.

Chapter 5, the conclusion would propose a comprehensive certification guideline and stake holder system for collecting the architect's fee.

## REFERENCES

Street, Drainage And Building Act 1974 Act 133 C.F.R. (2010).

Ali, N. A. N. B. A. (2001). *Dispute Resolution Arbitration and Mediation* Paper presented at the CPD Programme Organised By PAM In Conjunction With The Chartered Institute Of Arbitrators, Malaysia Branch.

Ar.Tan Pei Ing, S. L. K. S., Ar Jerry Sum Phoon Mum, Ar.Chee Soo Teng. (2010). *Handbook For PAM Contract 2006* Kuala Lumpur PAM Center.

Aun, A. C. S. (2010). *The Architect Role's And Responsibilities Under The Housing Development Act (Act 118) & Related Regulations* Paper presented at the PAM CPD Seminar.

Aun, A. C. S. (2010, 3 April 2010). *Housing Development Act 1966 Roles And Responsibilities Of Architects*. Paper presented at the PAM CPD Seminar Taylor University College Lakeside Subang Jaya.

Awalludin, Z. L. (2004). *guideline On Architectural Consultancy Practice*.

Awalludin, Z. L. (2007). *Guideline On Letter Of Release*.

Awalludin, Z. L. (2007). *Guidelines On Involvement In Other Trades Or Businesses*.

Awalludin, Z. L. (2008). *Certificate Of Completion And Compliance*.

Awalludin, Z. L. (2010). *Guidelines On Branch Office And Associated Practice*.

Awalludin, Z. L. (2010). *guidelines On Issuance Of Form F1 (Partial Certificate Of Completion And Compliance)*.

Town And Country Planning Act 1976 Act 172 C.F.R. (2008).

Architects Act 1967 (ACT 117) And Rules, Act 117 C.F.R. (2010).

Architects Rules 1996, Act 117 C.F.R. (2010).

Housing Development (Control And Licensing) Act 1966 (ACT 118) & Regulation Act 118 C.F.R. (2010).

- Housing Development (Control And Licensing) Regulations 1989, Act 118 C.F.R. (2010).
- National Land Code (Act 56 of 1965) And Regulation, Act 56 of 1965 C.F.R. (2010).
- Strata Titles Act 1985 (ACT 318) Rules And Order ACT 318 C.F.R. (2010).
- Uniform building By-Laws 1984 (2011).
- Dahlan, N. H. M. (2006). Abandoned Housing Projects In Malaysia: A Legal Perspective *The Malayan Law Journal Articles*, 6([it]2006>), 22.
- Dahlan, N. H. M. (2007). Rehabilitation Of Abandoned Housing Project In Peninsular Malaysia By A Purchasers' Voluntary Scheme: A Case Study *The Malayan Law Journal Articles*, 5([2007] 5 MLJ ccxlv; [2007] 5 MLJA 244), 35.
- Dahlan, N. H. M. (2007). Rehabilitation Of Abandoned Housing Project: Experience Of An Abandoned Housing Developer Through The Help Of Ax Government Agency. *The Malayan Law Journal Articles*, 1([2007] 1 MLJ lxxxiv; [2007] 1 MLJA 84), 40.
- Hassan, N. H. (2011). Houses Abandoned 10 Years. *Utusan Malaysia* Retrieved from [www.utusan.com.my](http://www.utusan.com.my)
- Ho, C. S. (2010). Plaintiffs- Hor Wei Kheng, Tan Mui Ee  
Defendants- Rakyat Corporation Sdn Bhd, Loh Chiah Eong, Loh Kee Beng  
Tort: Negligence - Developer failing to delivery vacant possession of building on time - Purchaser suing developer abd architects for damages for loss of use - Claim for rental of alternative building - Whether pure economic loss can be claimed - Whether architects negligent - Whether architects owed duty of care to purchaser - relationship of proximity - Reasonable foreseeability of damage - Fair and reasonable duty of care - Whether delays caused by architect's improper supervision of works - Whether purchaser's remedy lies in contract. *High Court Malaya At Penang Civil Suit No: 22-369-2004*, 31.
- Ing, S. R. a. T. P. Role Of The Architect In The PAM 69 Standard Form Of Building Contract As the Employer's Agent And As An Independent Certifier. . 11.
- Ing, T. P. (1998). *Architect's Certificates Under The Building Contract* Paper presented at the PAM CPD seminar.
- Ismail, E. H. (2009). *Amendment To Housing Development Act* (No. 92). Kuala Lumpur Arkitek MAA Sdn Bhd.
- Kasi, P. (1998). *Prograss Certification For Housing And Non-Housing Projects*. Paper presented at the PAM CPD Seminar.

- Keang, A. L. P. (2010). *Joint Management Body (JMB)/ Management Council (IMC) Issues And Challenges* Paper presented at the Architect Center- Building Inspector Training Course.
- Kee, A. S. C. H. (2011). *Architect's Appointment* Paper presented at the PAM CPD Seminar.
- Keong, N. C. (2001). *Clauses Empower The Architect To Act in Implementation of Building Contract*. Paper presented at the PAM Session 4 Tutorial.
- Keong, T. E. *Forms Of Architectural Practice* Paper presented at the PAM CPD Seminar.
- Keong, T. E. (1981). *Supplanting*.
- Keong, T. E. (1990). *Professional Legislation And Professional Bodies*. Paper presented at the PAM CPD Seminar.
- Keong, T. E. (August 1979). *Letters of Appointment & Conditions of Engagement*.
- KeongJ, C. S. (1989). Basco Enterprises Pte Ltd Vs Soh Siong Wai. [The Malayan Law Journal Article ]. *Malayan Law Journal [1990] 1 MLJ 193*(Civil Appeal No115 Of 1988), 12.
- Lai, J. (2005). LAM Part 3 Professional Practice Examination Unpublished Intensive Revision Course APEX Integrated.
- Lee, H. (1997). *Managing An Architect's Office* Paper presented at the PAM CPD Seminar.
- Lim, M. (2009). Low Cost Housing At Muara Tuang Road Kuching. Retrieved 05/03/2009, from [http://www.adpost.com/my/homes\\_offices/39453/](http://www.adpost.com/my/homes_offices/39453/)
- Loo, D. K. (1994). *Architectural Practice II*. Paper presented at the LAM-PAM Annual Discourse On Professional Practice 1994.
- Loo, D. K. (1995). *Professional Ethics & Practice* Paper presented at the PAM CPD Seminar.
- Malaysia, B. O. A. (2008). *UPDATE on Certificate Of Completion And Compliance (CCC)*.
- Architects (Scale Of Minimum Fees) Rules 2010, P.U.(A) 53. C.F.R. (2010).
- "Ready Reckoner" for Easy Calculation of Architect's Fees Based On The Architects (Scale Of Minimum Fees) Rules 1986 (2001).

- Mohamed, D. H. E. H. (1999). *Professional Practice 1- Architect's Responsibilities, Practice and The Law- Over View Paper* presented at the Part 3 Tutorials Organised by PAM Education Committee in preparation for the Join LAM-PAM Part 3 Examination Workshop 2001.
- Mohamed, H. B. (1984). *Selling Signatures*.
- Mohamed, H. B. (1985). *Branch Offices For Architects*.
- Mohamed, H. B. (1986). *Usage Of The Term "Chartered Architect"*.
- Mohamed, H. B. (1987). *REMINDER to Architects On The Architects (Scale Of Minimum Fees) Rules 1986 And Adequacy of Professional Services Provided To Third Parties*.
- Mohamed, H. B. (1988). *Guideline for Letters of Release*.
- Mohamed, H. b. (1991). *Guideline For Letter of Release*.
- Mohamed, Z. B. (1997). *Provision Of Free Or Virtually Free Services*.
- Mohamed, Z. b. (1998). *Guidelines For Letters of Release*.
- Mohamed, Z. B. (1999). *Violations Of The Code Of Professional Conduct As A Result Of Economic Pressure*.
- Mohamed, Z. B. (2000). *Certificate Of Completion And Compliance - Checklist*.
- Mohamed, Z. B. (2001). *Issues Pertaining To The Architectural Profession*.
- MURP. (2011). MBW2413 - Housing Practice And Law On *Lecture Power point Slides*.
- Pakmus. (2011). My experience with Communist Malaya. (Wednesday, September 21, 2011 ed.). Selangor.
- PAM. (2006). Agreement And Conditions Of PAM Contract 2006 (With Quantities) (pp. 45). PAM Center, Kuala Lumpur PAM Center.
- PAM. (2006). Agreement And Conditions Of PAM Sub-Contract 2006, *For Use Where The Sub-Contractor Is Nominated under The PAM Contract 2006* (pp. 40). PAM Center, Kuala Lumpur PAM Center.
- Ping, C. Y. (2008, Jan 2008). Improving the One-Stop Center (OSC). *REHDA Bulletin PP9309/12/2008(020070)*, 5.
- Ping, H. W. (1991). *Building Legislation And Regulations II*. Paper presented at the PAM CPD Seminar.

- RAIA. (1978). The Architect's Responsibility For Certificates. [Law note ]. *The Royal Australian Institute of Architects' Practice Note 3, 2.*
- RAIA. (1979). The Architect's Responsibility In Issuing Certificates. [Law note]. *The Royal Australian Institute of Architects' Practice Note 3, 8.*
- RAIA. (1984). The Independence Of The Certifier. [Law Note]. *The Royal Australian Institute of Architects' Practice Note, 3, 3.*
- RAIA. (1986). Beware The Client Who tries To Obstruct The Issue Of A Certificate [Cautionary Note]. *The Royal Australian Institute of Architects' Practice Note 3, 1.*
- RAIA. (1987). The Effect Of Progress Certificates. [Law note]. *The Royal Australian Institute of Architects' Practice Note 3, 4.*
- RAIA. (1993). Certification Of Completed Work By Builder [Practice Note]. *The Royal Australian Institute of Architects' Practice Note 3, 2.*
- RAIA. (1995). "Conclusive Evidence" And Final Certificate [Law note]. *The Royal Australian Institute of Architects' Practice Note 3, 3.*
- RAIA. (1995). Is The Certifier Responsible To The Builder Or Contractor For The Quality Of The Work? [Law Note]. *The Royal Australian Institute of Architects' Practice Note 2, 4.*
- RAIA. (2000). Arbitration. [Cautionary Note]. *The Royal Australian Institute of Architects' Practice Note 3, 1.*
- RAIA. (2000). The Dangers Of Providing Certificates For Financiers. [Cautionary Note]. *The Royal Australian Institute of Architects' Practice Note 4, 1.*
- RAIA. (2000). Private Certification [Cautionary Note]. *The Royal Australian Institute of Architects' Practice Note 2, 1.*
- RAIA. (2002). Be Ware If Both The Owner And The Contractor Want You To Issue A Certificate [Cautionary Note]. , 3, 2.
- Rajoo, J. S. a. S. Defects Liability Period, Final Account And Issuance Of The Final Certificate. 7.
- Rajoo, S. *Arbitration - General Outline and Procedures* Paper presented at the PAM CPD Seminar, PAM Center, Kuala Lumpur.
- Rajoo, S. (1998). The Rivised Malaysian Standard Form of Building Contract 1998. *The Journal of the Malaysian Bar, (1998) XXVII No.3, 48.*

- Rajoo, S. (2001). *Extension of Time and Liquidated and Ascertained Damages (LAD) Provisions In Building Contracts* Paper presented at the PAM CPD Seminar.
- S.Y.Kok. (2001). Determining The Boundaries Of Strata Parcels Under The Provisions Of The Strata Titles Act 1985 *The Malayan Law Journal Articles, 1, 25.*
- Shukor, N. A. (2002). *Architect's Certification Under The Standard Sale And Purchase Agreements.*
- Siong, C. L. (2001). *Architects' Certificates Under the PAM Agreement And Conditions of Building Contract (1998).* Paper presented at the PAM Part 3 Tutorials.
- Sum, J. (1998). *Essential Documents Which Make Up The Building Contract* Paper presented at the PAM CPD seminar.
- Sum, J. (1999). *Architect's Certificate Under The PAM Form of Contract.* Paper presented at the PAM CPD Course Module 8.
- Teh, D. (1998). *Pitfalls In Practice.* Paper presented at the PAM CPD Seminar
- Teng, A. C. S. (2007). *2007 Amendments To Strata Titles Act 1985.* Paper presented at the PAM CPD Seminar 2007.
- Teng, A. C. S. (2011). *Architect's Certification Under PAM 2006 Forms Of Contract* Paper presented at the PAM CPD Seminar.
- Teng, C. S. (1998). *Housing Matters-Form S&P to HDA Account.* Paper presented at the PAM CPD Seminar.
- Wee, D. (2009). Notes On Public housing Projects In Post-War Tokyo. *Singapore Architect.*
- Weng, Y. K. (2011). *Physical Development And Major Land Use Issues in Your Home Town - Location: Kuala Lumpur* Unpublished Assignment 1 UTM, Skudai.
- Woo, K. (2001). *Session 3- Architect's Obligations & Certification Under Housing & Developer's Act* Paper presented at the Joint LAM-PAM Part 3 Examination Workshop 2001.
- Yeang, D. K. (1994). *Architectural Practice 1.* Paper presented at the PAM CPD Seminar.
- Yeong, C. W. (1990). *Building Legislation And Regulations 1* Paper presented at the PAM CPD Seminar.
- Yin, S. T. K. (1991). *Building Contract Administration* Paper presented at the PAM CPD Seminar.
- Yusof, D. N. M. Z. N. (2007). *Understanding National Land Code: Land Dealings And Land Transactions.* Paper presented at the PAM CPD Seminar.