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(IJLGC)**www.ijlgc.com**A REVIEW BACKGROUND OF SPECIAL BUILDING
REGULATORY IN MALAYSIA**Nurul Sal Shabila Izanda^{1*}, Salfarina Samsudin², Aminah Mohsin³

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DOI: 10.35631/IJLGC.727003.**This work is licensed under [CC BY 4.0](https://creativecommons.org/licenses/by/4.0/)****Abstract:**

Focusing on Malaysia, the development of multi-unit buildings that incorporate numerous ownerships for various sorts of land uses, such as residential, commercial, industrial or mixed-use properties, has been made possible by the phenomena of vertical building construction. Peninsular Malaysia (excluding Sabah and Sarawak) and the Federal Territories of Kuala Lumpur, Putrajaya and Labuan are primarily governed by the Strata Titles Act 1985 (STA 1985), which also applies to the Federal Territories of Kuala Lumpur, Putrajaya and Labuan. The most contentious issue now being debated in stratified development is the non-issuance and transference of strata title to the parcel owner (or purchaser) of the old-stratified scheme. As a result, the amended Strata Titles (Amendment) Act 2007 (Act A1290) has incorporated the 'special building' as a new element in the strata title application to minimize the aforementioned issue in the application. Furthermore, Strata Titles (Amendment) Act 2017 (Act A1518) also has promulgated for any parcel owners to apply for the strata title of their properties. Although the legislation for encountering the non-issuance and transference of strata title is being upgraded, there has been no discernible increase in the number of strata title applications for special building, as certain States have shown no increase in application numbers since the special building is been introduced. Therefore, this paper aims to review the legal aspects of strata title application for special building as stipulated in the Strata Titles Act 1985 to deliver a broad understanding of the special building concept. The research method used is qualitative research which will rely on the analysis of the relevant statutes, rules, regulations, books, journals, articles, thesis, monographs, research grants reports, seminar papers, electronic materials and data internet.

Keywords:

Non-issuance; Special Building; Strata Title Application

Introduction

The leftover portion of land has been utilized by developing multi-unit building which implements multiple ownerships for various development such as residential, commercial industrial or mixed-use properties. Consequently, stratified development in Malaysia has increased and become typical in optimizing land sources. The strata development has been very successful in Peninsular Malaysia because the strata title scheme for separate parcels of approximately 1, 444, 858 (DGLM,2020) has been registered. This led to an increase in the land use density and intensity which facilitated land to be put to its highest and best use that provides the chances for any individual to own private property at affordable prices (Mohd, 2011). Strata Titles Act 1985 (STA) is the predominant legislation to govern and administer the subdivision buildings into parcels in Peninsular Malaysia. It has gone through several modifications and amendments to promote good governance in the property development industry. The latest strata law reforms have accelerated the issuance of strata title, increased protection and facilitated the management of strata for purchasers and imposed stricter conditions on developers.

Along together with STA 1985 modifications and amendments, one of the most significant current discussions in stratified development is the non-issuance and transference of strata title to the parcel owner (or purchaser) of the subdivided building for old schemes. Thus, Strata Title (Amendment) Act 2007 (Act A1290) followed by Strata Titles (Amendment) Act 2017 (Act A1518) are amended to mitigate the issues relating to the absence of strata title by introducing a new element known as 'special building'. Special building is an old building that was either occupied before June 1996 or any building occupied from June 1996 up to 11 April 2007 as provisioned in Section 4 of STA 1985. The absence of strata title has resulted from the inadequacies of previous strata title legislation that affects the poor delivery of strata title among the involved parties. Thus, this paper aims to deliver a wide understanding of the special building concept based on legal aspects that are stipulated in STA 1985.

The Uncertainties Faced by Special Building Parcel Owner

Strata title is very important for each parcel owner (purchaser) as proof to protect their exclusiveness and inclusiveness rights on the properties that he or she owns. According to National Land Code 1965 (NLC 1965), every registered property owner is the legal owner who is registered in the document of title which has the conclusiveness of the registration and indefeasibility of title. The registration of document of title (known as Title Deed) is maintained by the land registry evidencing the ownership of the said properties. When the registration process is complete, the concept of the indefeasible title is established, as specified in section 340(1) NLC 1965. However, when there is no title registration, it means that there is no indefeasibility of title by the purchaser. It has conclusively been shown that without the strata title, the parcel owner (purchaser) has to procure all the Sale and Purchase Agreement (SPA) documents for the property. This simply indicates that the parcel owner's (purchaser's) security of ownership may be threatened if there is no indefeasibility of title. The absence of strata title, therefore, demonstrates the uncertainties in the future, as there is no guarantee of ownership as a result. It has been clearly demonstrated that, in the absence of a strata title, the parcel owner

(purchaser) is responsible for obtaining all of the necessary Sale and Purchase Agreement (SPA) documentation for the property.

The STA 1985 is the most primary strata law imposed by all states in Peninsular Malaysia and needs to be construed together with NLC 1965. Therefore, Section 81(1)(c) STA 1985 is the source of power that explained the State Authorities are given the power to establish their own strata title states rules regarding special building as such the rules are consistent with STA 1985. Meanwhile, the Department of Director General of Land and Mines (DGLM) also has imposed DGLM Circular No. 5/2017: Application of Strata Title for Special Building as a recommendation for States Authorities to incorporate any regulations or guidelines into their strata title rules that would classify an old-stratified building as a special building. However, according to Izanda et al. (2021), the parcel registration for the special building is still showing a non-significant increase since STA 1985 has introduced special building through Act A1290 and Act A1580 as certain States do not show any improvement in the number of strata title application. It can be shown in Table 1 below.

Table 1: List of The Unregistered Strata Title for Special Building

Unregistered Strata Title for Special Building		
States	Schemes	Parcels
Kelantan	1	40
Putrajaya	1	52
Perlis	2	211
Kedah	2	254
Terengganu	6	650
Penang	8	1,518
Johor	36	1,850
Perak	74	3060
Pahang	33	3,327
Negeri Sembilan	18	5,186
Melaka	30	6,755
Kuala Lumpur	541	19,814
Selangor	149	53,829
Total	901	96, 546

Source: Department of Director General of Land and Mines (2021)

The non-issuances of strata title for special building happened due to the developer as an original proprietor failing to apply the strata title due to bankruptcy (Khadijah et al., 2015; Izanda et al., 2021). It demonstrates the views from interested parties such as developers as they play the most primary parts in the whole process of conveyance of strata properties to the purchaser. Hence, it will give the disturbance and uncertainties to purchasers to make any properties dealings in the future if the strata title granting is still incomplete and unfinished.

According to a previous study by Shukri and Ainul (2010), the purchaser was unable to transfer their parcel to a subsequent purchaser or engage in any other transactions such as lease and charge because the developer as original proprietor was in the process of being or has been

declared liquidated or wound up while the application for the issuance and transference of strata title to parcel owner had not yet been finalized. While waiting for the outcome of the case, Khadijah (2015) acknowledged that the purchaser is the most adversely affected interested party, as they will have difficulties in future transactions. When the strata title has not yet been issued, the purchaser of a parcel in a scheme would not be entitled to the protection of indefeasibility of title rights as provided by law (Khadijah and Faridah, 2002; Weir, 2018; Izanda et al., 2021). Hence, the next subtopic will manifest the processes and procedures involved in strata title application for special building in order to capture an ample understanding of the special building concept.

Strata Title Application for Special Building Processes and Procedure

The DGLM Circular No. 5/2017: Application of Strata Title for Special Building has highlighted the workflows of strata title application for special building. Hence, this circular is a recommendation for the States to implement any guidelines or rules for strata title application for special building in Strata Title States Rules. Figure 1 shows the workflows of strata title application for special building manifested by DGLM.

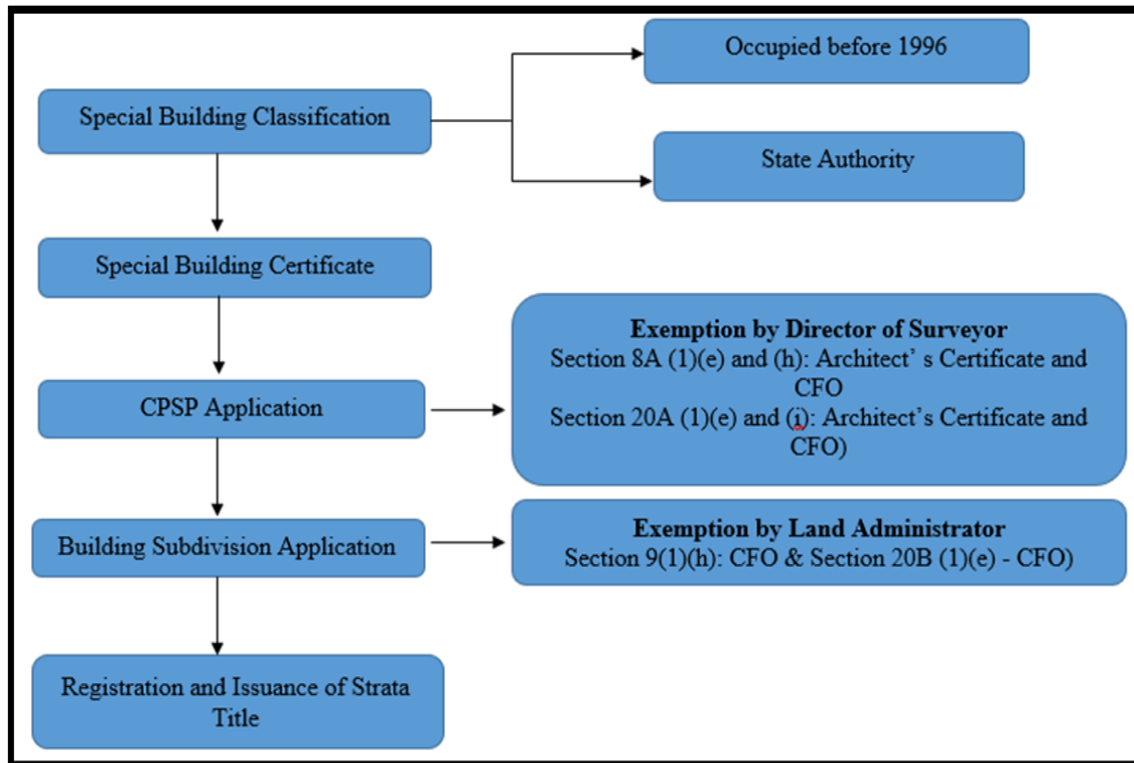


Figure 1: Workflow of Strata Title Application for Special Building

Source: Director General of Land Offices and Mines (2017)

According to Figure 1, the first process is any parcel owner or any interested parties (on behalf of the parcel owner such as Joint Management Body (JMB), liquidator or licensed surveyor) should apply for Special Building Certificate with States Land Offices and Mines (PTG) for Special Building Certificate. Before the Special Building Certificate is granted, the proposed old-stratified scheme needs to be classified or categorized as Special Building in the first place. Therefore, the land administrator or land registry in Land Offices and Mines (PTG) will inspect the building based on the special building characteristics such as the date of Certificate of Fitness for Occupation (CFO) or any utility bills or any other evidence that shows the said building is occupied before June 1996 up to 11 April 2007.

According to the circular, the requirement for the building certificate by Professional Architect or Professional Engineer and CFO or Certificate of Completion and Compliance (CCC) are exempted for strata title application for special building in a line with the amendments of Section 8A, 9, 20A and 20B of Strata Titles (Amendment) Act 2013 (Act A1450). These provisions are applicable to apply CPSP in order for the Director of Survey as well as the Director of Lands and Mines to complete the process for the strata title registration for special buildings.

Furthermore, the original proprietor or developer needs to submit the proposed strata plan for the approval by the State Director of Survey and Mapping for issuance of Certificate of Proposed Strata Plan (CPSP) and then submit the application for building or land subdivision to the respective State Director of Lands and Mines for registration of strata title. The State Director of Survey and Mapping issues a CPSP to show that the plans (location plan, storey plan, and delineation plan, as applicable) are in order. A CPSP is required to guarantee that the technical parts of the application, such as borders, air space permits (if applicable) and technical documents have been verified and presented correctly. If any developers fail to meet the CPSP requirements, the next step in the strata title registration process is to expedite the subdivision of building and/or land. Hence, the strata ownership could be transferred to the parcel owner.

According to REHDA (2016), CFO has been replaced with CCC that will be issued by Professional Architects and Professional engineers as well as Building Draughtsman that registered with the Board of Architects Malaysia (LAM) starting from April 11, 2007. CFO is issued by local governments and governed under the Uniform By-Laws of the Street, Drainage and Building Act 1974 (Act 133). CFO is granted to the owner of the building once the building has been constructed and maintained in accordance with terms, design and specifications of the building regulations (HBA, 2007).

It was claimed by Cheah (1996) that if the building has not been issued with CFO by the local government, any application for strata title will be denied, resulting in a delay in the issuance of the strata title by the Land Office. The issuance of CFO by local authorities, according to HBA (2007), causes certain issues. First, the additional limitations were imposed by local authorities when applying for CFO. Second, there were also many technical agencies involved and not enough technical officers to handle the CFO. The purchasers also express dissatisfaction with the absence of CFO, claiming that it prevented them from moving in or performing renovations on their homes.

Conclusion

The majority of past research has revealed gaps in earlier legislation that have resulted in the establishment of properties without strata titles. It has been indicated in the DGLM circular that it will be dependent on the Strata Titles States Rules whether or not the documents exemptions and construction certificate would be exempted for the purpose of CPSP application. Also stated in the same circular is that Strata Titles States Rules will be responsible for imposing and manifesting the characteristics of special buildings that will be classified as special buildings under Section 4 of STA 1985. As a result, Section 81(1)(c) of the STA 1985 grants State Authorities the authority to develop their own laws and practices relating to special buildings. As a result, the rules adopted by the State Authorities are consistent with the STA 1985. However, according to a recent study, the number of strata title registrations for special buildings is still insufficient, indicating that the system is still inefficient. As a result, it is necessary to strengthen a strategic partnership between government sectors, professional organizations and researchers in order to improve strata title rules and regulations in order to minimize strata ownership difficulties.

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