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MANAGEMENT OF COMMON PROPERTY



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MAINTENANCE AND MANAGEMENT OF BUILDINGS AND COMMON PROPERTY

A GUIDE

This write-up serves to walk you through the three different stages of maintenance and management of strata-titled buildings as well common property as governed under the **Building and Common Property (Maintenance and Management) Act, 2007 ("BCPA")**¹ and Strata Titles Act, 1985 ("STA").

Stage 1

At the initial and early stages, the developer is solely responsible for the proper maintenance and management of building and common property. Towards this, the developer would usually request the purchasers to enter into a **Deed of Mutual Covenants ("DMC")**² which sets down the various rules and regulations and charges payable by the purchasers for the maintenance and management of property.

However, the developer must note that it is strictly prohibited from collecting any charges unless and until:

- (i) vacant possession of the property has been delivered; and
- (ii) the **Building Maintenance Account ("BMA")**³ has been opened for each development area on which the building is erected. The developer shall not open and maintain a BMA together with any other building outside the development area.

All charges collected from purchasers shall not form the developer's property and must be deposited into the BMA within **two (2) working days**⁴ of receipt of such monies by the developer.

Stage 2

Subsequently, within **twelve (12) months from the delivery of vacant possession of parcels to the purchasers**⁵, the developer is required to form a body comprising both the developer and purchasers, known as the Joint

¹ BCPA has now been repealed; and replaced with **Strata Management Act 2013 ("SMA")** wef **1 JUNE 2015**. However, under the BCPA (although repealed), the Developer would still liable for the offences /statutory breaches committed thereunder prior to 1 June 2015.

² **"Section 148. Non-application of other written laws, contracts and deeds**

On the coming into operation of this Act, in a local authority area or part of a local authority area or in any other area, the provisions of any written law, contracts and deeds relating to the maintenance and management of buildings and common property in as far as they are contrary to the provisions of this Act shall cease to have effect within the local authority area or that other area."

Q: To check if any of our DMC clauses contradict the SMA?

³ Replaced with one **maintenance account** under **s10(1) SMA** and one **sinking fund account s11(1) SMA**

⁴ It's now **THREE** working days: **s 10(3) SMA**

⁵ See **s17(1) SMA**:

"Section 17. Establishment of a joint management body

Management Body (“JMB”). Once formed, the JMB would take over the responsibility of managing and maintaining the property from the developer; and accordingly, the developer’s right to collect charges from the purchasers shall cease. In effect, the developer’s DMC would no longer be applicable as it would in turn be replaced by the JMB’s own set of house rules and charges.

In line with the handing over of its responsibilities to JMB, the developer is required to transfer to JMB any surplus in the BMA within one (1) month from the establishment of the JMB.

Stage 3⁶

This is the third and final stage which commences upon the opening of the strata register book. Upon the opening of such book, the **Management Corporation (“MC”)** consisting of all parcel proprietors comes into existence to take over the management and maintenance of the property from the JMB.

The JMB shall transfer all its assets and liabilities to MC not later than one (1) month from the date of the first meeting of the MC.

Thereafter, within three (3) months from the date of the first meeting, the JMB is dissolved.



(1) A joint management body shall be established upon the convening of the first annual general meeting of that joint management body—

*(a) if vacant possession was delivered **before** the commencement of this Act, not later than **twelve months from the commencement of this Act**; or*

(b) if vacant possession is delivered after the commencement of this Act, not later than twelve months from the date of delivery of vacant possession of a parcel to a purchaser. “

⁶ KIV - will advise on Management Corporation separately on a later date

SALE AND PURCHASE AGREEMENT ("SPA") AND DEED OF MUTUAL COVENANTS ("DMC") SIGNED



DEVELOPER OPENS BUILDING MAINTENANCE ACCOUNT ("BMA")¹

Note: One BMA shall be opened for each development area² on which the building is erected³



DEVELOPER DELIVERS VACANT POSSESSION ("VP")

Upon delivery of VP, Developer pays deposit⁴ to Commissioner to rectify defects in common property after completion⁵



DEVELOPER STARTS COLLECTING CHARGES FROM PURCHASERS⁶



DEVELOPER'S WRITTEN NOTICE TO PURCHASERS REQUESTING FOR PAYMENT SHALL BE SUPPORTED BY A DETAILED STATEMENT OF CHARGES⁷



ALL CHARGES RECEIVED FROM PURCHASERS MUST BE DEPOSITED ONLY INTO BMA;⁸
WITHIN 2 WORKING DAYS OF RECEIVING THE MONEY⁹

NOTE:

Throughout Stage 1:

- a. Developer is responsible for the maintenance and management of the property; ¹⁰
- b. Developer is free to impose its own covenants, house rules, amount of Charges payable etc. via the DMC. ¹¹

¹ Timingwise, this account must be opened BEFORE vacant possession is delivered :s16(1) BUILDING AND COMMON PROPERTY (MAINTENANCE AND MANAGEMENT) ACT 2007 (“BCPA”)

Note: S16(3): This account is maintained by Developer until JMB (see Stage 2 below) for the building is established

² s16(2) BCPA

³ Note that “The developer shall not open and maintain a Building Maintenance Account together with any other building outside the development area” : s16(4)

Please note the following changes under the SMA:-

Note: no more Building Maintenance Account under the new SMA. Instead, Developer to open ONE **maintenance account (s10)** and ONE **sinking fund account (s11)**:-

“Section 10. Developer to establish maintenance account

(1) A developer shall open one maintenance account in respect of each development area with a bank or financial institution—

*(a) if vacant possession of a parcel was delivered before the commencement of this Act, **on the date of the commencement of this Act**; or*

(b) if vacant possession of a parcel is delivered after the commencement of this Act, at any time before the delivery of vacant possession,

*but in any case, **before the Charges are collected** from the purchaser of any parcel in the development area.*

*(2) Each maintenance account shall be operated and maintained by the developer until the expiry of the **developer’s management period**.*

(3) The developer shall deposit into the maintenance account—

(a) the Charges received by the developer from the purchasers in the development area; and

(b) the Charges to be paid by the developer in respect of those parcels in the development area which have not been sold,

*and all such moneys shall be deposited into the maintenance account within **three** working days of receiving the moneys.*

*...” [note: **s10(4) SMA** specifies how the monies in the maintenance account are to be used by the Developer eg. maintain the common property, pay for cleaning services , insurance etc].*

“Section 11. Developer to establish sinking fund account

(1) A developer shall open one sinking fund account in respect of each development area with a bank or financial institution—

(a) if vacant possession of a parcel was delivered before the commencement of this Act, **on the date of the commencement of this Act**; or

(b) if vacant possession of a parcel is delivered after the commencement of this Act, at any time before the delivery of vacant possession,

but in any case, **before** the contribution to the sinking fund is collected from the purchaser of any parcel in the development area.

(2) Each sinking fund account shall be operated and maintained by the developer until the expiry of the **developer’s management period**.

(3) The developer shall deposit into the sinking fund account—

(a) the contribution to the sinking fund received by the developer from the purchasers in the development area; and

(b) the contribution to the sinking fund to be paid by the developer in respect of those parcels in the development area which have not been sold by the developer,

and all such moneys shall be deposited into the sinking fund account within **three** working days of receiving the moneys.

...” [note: **s11(4) SMA** specifies how the monies in the sinking fund account are to be used by the Developer eg. painting works; acquisition of movable property, renewal of fixtures/fittings etc.]

⁴ via cash or bank guarantee

⁵ S31(3): “The Commissioner may use the deposit for the purpose of carrying out any work which is necessary to rectify any defects in the common property of the development area;

S31(5): “Any unexpended deposit shall be refunded to the developer on the expiry of the defect liability period for the development area”.

Under SMA:-

ON the deposit for rectifying defects on common property, see **s 92 SMA:-**

“Section 92. Developer to pay deposit to rectify defects on common property

(1) A developer of a building shall deposit in cash or bank guarantee with the Commissioner **such sum as may be determined by the Commissioner** for the purpose of carrying out any work to rectify any defects in the common property of the development area after the completion of the common property.

(2) The deposit referred to in subsection (1) shall be paid to the Commissioner **upon the handing over of vacant possession**.

(3) The Commissioner may use the deposit for the purpose of carrying out any work which is necessary to rectify any defects in the common property of the development area.

(4) Where the Commissioner has determined that the deposit is insufficient for rectifying the defects to the common property, the Commissioner may direct the developer to deposit within fourteen days such further sums as the Commissioner may determine.

(5) Any unexpended deposit shall be refunded to the developer on the expiry of the defect liability period for the development area.

(6) Any developer who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding **five thousand ringgit** and to **a further fine not exceeding fifty ringgit for every day or part thereof during which the offence continues after conviction**". (no change to the punishment)

⁶ Developer is prohibited from collecting any charges until and unless both BMA opened and VP delivered: S20(1) BCPA. Contravention of this section would attract a fine not more than RM100,000 or imprisonment not more than 1 year maximum; or both

Similarly under the new SMA, no maintenance charges nor sinking fund contribution can be collected by developer until AFTER the accounts have been opened. Please refer to:-

(1) **s10(1) (a) SMA** as above : Charges can only be collected AFTER the maintenance account has been opened. [Penalty: **s10(7) SMA**: maximum **RM250,000** fine or jail term maximum **3 years**; or **BOTH**;]

(2) **s11(1) (a) SMA** as above : Sinking fund contribution can only be collected AFTER the sinking fund account is opened. [Penalty: **s11(7) SMA**: maximum **RM250,000** fine or jail term maximum **3 years**; or **BOTH**;]

(3) "**Section 13, SMA: Prohibition on collection of moneys before accounts are opened**

" (1) No person shall at any time collect any Charge, or contribution to the sinking fund from any purchaser for the maintenance and management of any building or land intended for subdivision into parcels and the common property unless—

(a) a maintenance account and a sinking fund account have been opened in respect of the development area; and

(b) vacant possession of the parcel purchased by the purchaser has been delivered to the purchaser.

(2) Notwithstanding subsection (1), any developer of a development area which has been completed on or before the commencement of this Act and has, immediately before that date, been collecting moneys from the purchasers for the maintenance and management of any building or land intended for subdivision into parcels and the common property comprised in the development area, **may continue to do so until the joint management body is established, provided that all moneys shall be collected and dealt with by the developer in accordance with this Act.**

(3) Any person who fails to comply with subsection (1) or (2) commits an offence and shall, on conviction, be liable to a fine not exceeding **two hundred and fifty thousand ringgit** or to imprisonment for a term not exceeding **three years or to both.**"

⁷ stating in detail, the categories of expenditure in respect of which charges are to be paid: s23(3) BCPA; Purchaser to pay up within 14 days of its receipt of the notice failing which, interest as determined by JMB (but not more than 10%) shall be paid by Purchaser.

On this, the following provisions in the SMA are relevant:-

s12(3) SMA:

"the amount of Charges to be paid shall be determined by the Developer in proportion to the allocated share units of each parcel;

s12(4) SMA:

“the amount of contribution to the sinking fund to be paid shall be a sum equivalent to ten per cent (10%) of the Charges”;

s12(5):

*“the purchaser is to pay up the Charges and sinking fund contribution within **14 days** of receiving a notice from the Developer; and*

s12(6):

*“if any sum remains unpaid at the expiry of the 14 days, then purchaser has to pay interest at **10% per annum** on a daily basis.”*

⁸ Even in respect of unsold parcels, Developer must deposit into the BMA “all charges for the maintenance and management of the common property to be paid by the developer in respect of those parcels in the development area which have not been sold, being a sum equivalent to the maintenance charges payable by the purchasers to the developer had the parcels been sold”: s17(1)(b) BCPA

Likewise. under s12(2) SMA:-

“The developer shall pay the Charges, and contribution to the sinking fund, in respect of those parcels in the development area which have not been sold, being a sum equivalent to the Charges, and contribution to the sinking fund, payable by the purchasers to the developer had the parcels been sold.”

⁹ s18 BCPA

¹⁰ See s5(4) BCPA. This is consistent with the HDA provisions s18(1) Schedule H, Housing Development (Control & Licensing) Regulations 1989.

Section 9, SMA: Duties and powers of developer during developer’s management period (ie. the period from the date of delivery of vacant possession of a parcel to the purchaser until one month after the joint management body is established”.

(1) Subject to the provisions of this Act, a developer shall, during the developer’s management period, be responsible to maintain and manage properly any building or land intended for subdivision into parcels and the common property.

(2) Without prejudice to the generality of subsection (1), the duties of the developer during the developer’s management period shall be as follows:

(a) to determine and impose the Charges to be deposited into the maintenance account;

(b) to determine and impose the contribution to the sinking fund to be deposited into the sinking fund account;

(c) to effect insurance according to this Act;

(d) to comply with any notice or order given or made by the local authority or any competent public authority requiring the abatement of any nuisance on the common property, or ordering repairs or other work to be done in respect of the common property or other improvements to the common property;

(e) to prepare and maintain a register of all parcel owners of the buildings or lands intended for subdivision into parcels;

(f) to ensure that the accounts required to be maintained by the developer under this Act are audited and to provide audited financial statements for information to all purchasers;

(g) to enforce by-laws; and

(h) to do such other things as may be expedient or necessary for the proper maintenance and management of the buildings or lands intended for subdivision into parcels and the common property.

(3) The powers of the developer during the developer's management period shall be as follows:

(a) to collect the Charges from the parcel owners in proportion to the allocated share units of their respective parcels;

(b) to collect the contribution to the sinking fund from the parcel owners;

(c) to authorize expenditure for the carrying out of maintenance and management of the buildings or lands intended for subdivision into parcels and the common property;

(d) to recover from any parcel owner any sum expended by the developer in respect of that parcel in complying with any such notice or order referred to under paragraph (2)(d); and

(e) to do all things reasonably necessary for the performance of its duties under this Act.

(4) During the developer's management period—

(a) the developer shall ensure that a separate and distinct area is set aside out of the common property of the development area for the sole purpose of an administration office for the carrying out of duties of the developer under this Act; and

(b) the developer shall not enter into any contract relating to the maintenance and management of a building or land intended for subdivision into parcels and the common property in the development area for any period after the expiration of the developer's management period.

*(5) Any developer who fails to comply with subsection (1), (2) or (4) commits an offence and shall, on conviction, be liable to a fine not exceeding **two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both**"*

¹¹ For properties governed under SCHEDULE H, HD Act, Developer to ensure that the service charges imposed under their DMC is not arbitrarily fixed; but must be consistent with s18(2) Schedule H, which determines the amounts payable by Purchaser

STAGE 2: JMB

WITHIN TWELVE MONTHS FROM VP DATE:
DEVELOPER CONVENES FIRST MEETING OF ALL PURCHASERS ¹



- AT THE FIRST MEETING:-
- JOINT MANAGEMENT BODY (“**JMB**”) COMPRISING DEVELOPER AND PURCHASERS IS ESTABLISHED ²;
 - JMB TAKES OVER FROM DEVELOPER
 - (eg. JMB to maintain/manage common property; to determine the amount of Charges payable; enforce its own set of House Rules etc.)



JMB IN TURN FORMS A JOINT MANAGEMENT COMMITTEE (“**JMC**”) ³
-TO PERFORM JMB’S DUTIES ON JMB’S BEHALF ⁴



WITHIN ONE MONTH FROM ESTABLISHMENT OF JMB,
DEVELOPER MUST TRANSFER TO JMB ANY SURPLUS ⁵ IN BMA;
SUCH MONIES TO FORM THE BUILDING MAINTENANCE FUND (“**BMF**”)
MAINTAINED BY JMB ⁶;

BMF uses: To pay for eg. cleaning services; security; insurance; other expenses to manage/maintain common property ⁷



JMB MUST ALSO OPEN AND MAINTAIN A SINKING FUND ⁸
Sinking Fund uses: To meet JMB’s actual/expected liabilities (eg. painting of common property, replacement of fixtures/fittings etc.)

¹ s5(1) BCPA .

Under SMA: _

“Section 17. Establishment of a joint management body

(1) A joint management body shall be established upon the convening of the first annual general meeting of that joint management body—

*(a) if vacant possession was delivered before the commencement of this Act, **not later than twelve months from the commencement of this Act** (ie. **31.5.2016**); or*

(b) if vacant possession is delivered after the commencement of this Act, not later than twelve months from the date of delivery of vacant possession of a parcel to a purchaser.

...

(4) The joint management body shall comprise the developer and the purchasers”.

Developer to give 14 days prior written notice of the meetings : s5(2) BCPA. Failure to convene meeting by Developer may lead to a fine of RM20,000 or 3 months imprisonment or both

Under SMA: _

“Section 18. Duty of developer to convene first annual general meeting of joint management body

(1) It shall be the duty of the developer to convene the first annual general meeting of the joint management body within the period specified in subsection 17(1).

*(2) Any developer who fails to comply with subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding **two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding three years or to both.***

*(3) The developer shall give written notice of the first annual general meeting of the joint management body to all purchasers not less than **fourteen days** before the meeting, and a copy of such written notice shall be displayed at a conspicuous part of the development area;*

*(4) The developer shall prepare and place before the **first annual general meeting** of the joint management body for consideration **an annual budget** that sufficiently sets the expected and estimated expenditure required to properly maintain and manage the buildings or lands intended for subdivision into parcels and the common property which shall be **for a period of twelve months starting on the first day of the month following the date of the first annual general meeting.***

(5) If the developer fails to convene the first annual general meeting of the joint management body within the period specified in subsection 17(1), the Commissioner may appoint any person to convene the first annual general meeting of the joint management body within such time as may be specified by the Commissioner, and the developer shall pay all the expenses incurred for that purpose.”

See also newly inserted **s19 SMA** on the first AGM:-

“Section 19. First annual general meeting of joint management body

(1) The agenda for the first annual general meeting of the joint management body shall include the following matters:

(a) to determine the number of members of the joint management committee and to elect the members of the joint management committee;

(b) to consider the annual budget prepared by the developer under subsection 18(4);

(c) subject to subsections 25(2) and (3), to determine the amount to be paid by a parcel owner as the Charges, and contribution to the sinking fund;

(d) to determine the rate of interest payable by a parcel owner in respect of any late payment of the Charges, or contribution to the sinking fund, by the parcel owner;

(e) to consider the audited accounts specified in subparagraph 14(1)(b)(ii);

(f) to confirm the taking over by the joint management body of insurances effected by the developer under this Act;

(g) to make additional by-laws; and

(h) to consider any other matter connected with the maintenance and management of the common property of the building or land intended for subdivision into parcels.

(2) If within half an hour after the time appointed for the meeting no purchaser entitled to vote turns up or all the purchasers present, for any reason, refuse to be members of the joint management committee, the developer or the person appointed by the Commissioner to convene the meeting shall, within seven days of the date of the meeting inform the Commissioner of the fact and the Commissioner may—

(a) appoint a new date for the election of the joint management committee; or

(b) appoint a managing agent under Part VI to maintain or manage the buildings or lands intended for subdivision into parcels and the common property comprised in the development area.”

² Note: Once JMB is formed, (i) Developer loses the right to collect charges; (ii) DMC no longer applies; superceded by JMB’s own rules : s8 of the Act. Hence, Developer must refrain from incurring further expenses in management/maintenance of properties after JMB formed; as such charges will not be recoverable from Purchaser.

³ Comprising between 5 to 12 purchasers. Note: no time limit fixed as to when JMC must be formed. See **s22(2) SMA read with Second Schedule**: 3-14 natural persons

⁴ See First Schedule BCPA on JMC’s meeting provisions. See **Second Schedule, SMA** for meeting provisions

⁵ Means any surplus in the BMA “after payment of all the expenditure which have been properly charged to the BMA”: s22(1) BCPA.

⁶ The BMF consists of the maintenance charges payable to JMB; monies derived from sale of JMB’s property (if any); other monies lawfully received by JMB etc. : s22(2) BCPA.

⁷ S22(3) BCPA

Under SMA: _

“Section 15. Handing over by developer to the joint management body

(1) A developer shall, before the developer’s management period expires—

(a) transfer all balances of moneys in the **maintenance account and the sinking fund account**, after payment of all the expenditure which have been properly charged to the accounts, to the joint management body;

(b) hand over to the joint management body—

(i) the administration office set up by the developer under paragraph 9(4)(a);

(ii) the audited accounts of the maintenance account and the sinking fund account or, if such accounts have not been audited, the unaudited accounts;

(iii) all the assets of the development area;

(iv) all records relating to and necessary for the maintenance and management of the buildings or lands intended for subdivision into parcels and the common property of the development area; and

(v) all invoices, receipts and payment vouchers in respect of the maintenance account and sinking fund.”

⁸ Into which shall be paid, such portion of the contribution to the BMF as may, from time to time, be determined by the Body : s24 BCPA. Note : no fixed time period as to when the Sinking Fund must be in place

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STAGE 3: MC

MANAGEMENT CORPORATION ("MC")¹ ESTABLISHED UPON OPENING OF STRATA REGISTER BOOK
(CONSISTING OF ALL PARCEL PROPRIETORS)²



MC ELECTS COUNCIL TO PERFORM MC'S DUTIES³



WITHIN ONE MONTH AFTER EXPIRATION OF INITIAL PERIOD⁴ ;
ORIGINAL PROPRIETOR⁵ MUST CONVENE FIRST AGM of the MC⁶
(to decide on amount of Charges payable; insurance to be effected etc.)

Note: for the period between the date of opening the strata register book up to date the first AGM of MC is held,
it is the original proprietor who determines the amount of contributions payable to the MC by proprietors⁷



WITHIN ONE (1) MONTH FROM DATE OF MC'S FIRST MEETING:⁸
HAND OVER FROM JMB TO MC
(JMB hands over House Rules, BMF audited accounts; JMB'S assets & liabilities etc.)



WITHIN THREE (3) MONTHS FROM DATE OF MC'S FIRST MEETING:
JMB DISSOLVES⁹



MC OPENS A MANAGEMENT FUND TO MEET ITS ADMINISTRATIVE EXPENSES
(to manage/administering common property; etc.)¹⁰



⁷ KIV for now

MC TO ALSO OPEN A SPECIAL ACCOUNT ¹¹

¹ Duties of MC are found in s 43 STA: to manage/maintain common property; to insure etc.

² S39 (1) STRATA TITLES ACT 1985 ("STA").

³ S39(4)STA & Schedule 2 STA Consisting of not less than 3 and not more than 14 proprietors.

⁴ means the period commencing on the day on which the MC is formed and ending on the day on which there are proprietors, excluding the proprietor of the lot who is registered as the proprietor of a parcel or parcels or a provisional block or blocks, the sum of whose share units is at least one-quarter of the aggregate share units.

⁵ means the proprietor of the lot immediately before the subdivision of building. To give at least 14 days prior notice of the meeting : s41(4) STA.

⁶ s41 STA: failure to do so by original proprietor may trigger a RM25,000 fine plus additional RM2,000 for each day of delay.

⁷ S41A STA: this would supercede the amount charged by JMB previously. Note also that once MC is in existence, JMB no longer has the right to collect Charges.

⁸ s15(2) BCPA.

⁹ S15(1) BCPA.

¹⁰ S45 STA Note: no time limit stated as to when this account must be opened.

¹¹ into which shall be paid such portion of the contribution to the management fund as may be from time to time determined by MC for the purposes of meeting its actual or expected liabilities (eg. painting, fixtures and fittings replacment) s46 STA: Note: no time limit stated as to when this account must be opened.

FOR FURTHER ENQUIRIES PLEASE CONTACT US.

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