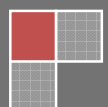


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# MANAGEMENT OF COMMON PROPERTY

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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") 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") 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") 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 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, the developer is required to form a body comprising both the developer and purchasers, known as the Joint 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 3

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 MC's said first meeting, the JMB is dissolved.

## STAGE 1: DEVELOPER

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



DEVELOPER OPENS BUILDING MAINTENANCE ACCOUNT (“BMA”) <sup>1</sup>

Note: One BMA shall be opened for each development area <sup>2</sup> on which the building is erected <sup>3</sup>



DEVELOPER DELIVERS VACANT POSSESSION (“VP”)

Upon delivery of VP, Developer pays deposit <sup>4</sup> to Commissioner to rectify defects in common property after completion <sup>5</sup>



DEVELOPER STARTS COLLECTING CHARGES FROM PURCHASERS <sup>6</sup>



DEVELOPER’S WRITTEN NOTICE TO PURCHASERS REQUESTING FOR PAYMENT SHALL BE SUPPORTED BY A DETAILED STATEMENT OF CHARGES <sup>7</sup>



ALL CHARGES RECEIVED FROM PURCHASERS MUST BE DEPOSITED ONLY INTO BMA; <sup>8</sup>  
WITHIN 2 WORKING DAYS OF RECEIVING THE MONEY <sup>9</sup>

NOTE:

Throughout Stage 1:

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

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<sup>1</sup> 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

<sup>2</sup> s16(2) BCPA

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

<sup>4</sup> via cash or bank guarantee

<sup>5</sup> 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”.

<sup>6</sup> 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

<sup>7</sup> 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.

<sup>8</sup> 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

<sup>9</sup> s18 BCPA

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

<sup>11</sup> 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 <sup>1</sup>



- AT THE FIRST MEETING:-
- JOINT MANAGEMENT BODY (“JMB”) COMPRISING DEVELOPER AND PURCHASERS IS ESTABLISHED <sup>2</sup>;
  - 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”) <sup>3</sup>  
-TO PERFORM JMB’S DUTIES ON JMB’S BEHALF <sup>4</sup>



WITHIN ONE MONTH FROM ESTABLISHMENT OF JMB,  
DEVELOPER MUST TRANSFER TO JMB ANY SURPLUS <sup>5</sup> IN BMA;  
SUCH MONIES TO FORM THE BUILDING MAINTENANCE FUND (“BMF”)  
MAINTAINED BY JMB <sup>6</sup>;  
BMF uses: To pay for eg. cleaning services; security; insurance; other expenses to manage/maintain common property <sup>7</sup>



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

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<sup>1</sup> s5(1) BCPA .

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

<sup>2</sup> 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.

<sup>3</sup> Comprising between 5 to 12 purchasers. Note: no time limit fixed as to when JMC must be formed.

<sup>4</sup> See First Schedule BCPA on JMC's meeting provisions.

<sup>5</sup> Means any surplus in the BMA "after payment of all the expenditure which have been properly charged to the BMA": s22(1) BCPA.

<sup>6</sup> 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

<sup>7</sup> S22(3) BCPA

<sup>8</sup> 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

### STAGE 3: MC

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



MC ELECTS COUNCIL TO PERFORM MC'S DUTIES<sup>3</sup>



WITHIN ONE MONTH AFTER EXPIRATION OF INITIAL PERIOD<sup>4</sup> ;  
ORIGINAL PROPRIETOR<sup>5</sup> MUST CONVENE FIRST AGM of the MC<sup>6</sup>  
(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 proprietors<sup>7</sup>



WITHIN ONE (1) MONTH FROM DATE OF MC'S FIRST MEETING:<sup>8</sup>  
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 DISSOLVES<sup>9</sup>



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



MC TO ALSO OPEN A SPECIAL ACCOUNT<sup>11</sup>

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

<sup>2</sup> S39 (1) STRATA TITLES ACT 1985 ("STA").

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

<sup>4</sup> 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.

<sup>5</sup> 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.

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

<sup>7</sup> 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.

<sup>8</sup> s15(2) BCPA.

<sup>9</sup> S15(1) BCPA.

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

<sup>11</sup> 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 replacement) 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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