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The Difference Between Having Your Name on The SPA vs Strata Title Deed

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One must always be mindful that having one's name on the Sale and Purchase Agreement (SPA) does not result in having legal ownership of the property. It is only when one's name was registered on the Title Deed that the legal ownership of the property passes to him or her.

Without a strata title, the homebuyer would not have the protection and the rights to indefeasibility of title afforded by the National Land Code 1960 (NLC) even though his or her name is in the signed SPA. Prior to the issuance of the strata title, a homebuyer's sole proof of ownership would only be the SPA but this presented various shortcomings to the homebuyer.

This alert discusses the need to perfect one's strata title in order to protect and safeguard your rights and interests to the property.

What are Strata Titles?

Strata titles are the result of modern urbanization due to the scarcity of lands leading to the development and change of pattern in property ownership. A title or strata title is also called as 'Geran' or 'Grant' by many Malaysians.

A strata title is a form of property ownership of a parcel in a subdivided building under various categories of use such as residential, commercial, retail, mixed-use (being both retail and residential), and service apartments that offers different types of properties like condominiums, apartments, and other multi-storied houses (i.e. gated and guarded residential properties).

Unlike traditional landed property, in any strata scheme, there will be a common property to be used by all the owners of the subdivided building such as lifts, stairs, open spaces, corridors, garden, and community facilities.

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Does one Obtain the Strata Title upon Signing the SPA?

No, a purchaser does not obtain the strata title immediately upon signing of the SPA.

Previously under Section 8(2) of the Strata Titles Act 1985 (STA 1985), the application for the strata title is to be made only after the building is completed i.e. within 6 months from the date of the certificate of completion and compliance ("CCC") or within 6 months from the date of the sale (in the event the sale of the building or land parcels is made after the issuance of the CCC).

However, under the amendment by the Strata Titles (Amendment) Act 2013 (STAA 2013), the process of application of the strata title has been expedited whereby the application process now can be made within 3 months once the building is at the super structure stage, (i.e. the stage upon the completion of building works up to completion of walls that are necessary for measurement of parcels, accessory parcels and common property).

In the case of housing accommodation within the purview of the Housing Development (Control and Licensing) Act 1966 (HDA), the Developer has to submit the application for strata titles for the units before they launch the housing project and further, for the Developer to be entitled to claim 25% of the purchase price for work done, the strata titles have to be issued first and the Developer has to deliver vacant possession to the purchaser and give the original strata title to the purchaser together with the relevant transfer forms duly signed.

The change advocated under STAA, 2013 and with such stringent obligations on the Developer under the HDA, it is evident that the government is promoting the importance of having a strata title to be delivered to the purchaser. Thus it is important for the purchaser to then expeditiously proceed to perfect the transfer.

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Once the developer has informed the buyer that the strata title is ready for Perfection, the homebuyer will need to execute a document known as the Memorandum of Transfer

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(otherwise known as Instrument of Transfer), a legal document prescribed by the NLC.

What Is “Perfection Of Title”?

Perfection is a process of transferring ownership. Basically, it is the *process of changing the name of the Developer or the registered proprietor of the land into the purchaser’s name.*

Knowing One’s Rights

Here are some reasons why a home buyer should not sit on their rights to secure a strata title.

1. Delay in a sale transaction

One of the most common questions posed to conveyancing solicitors is: “Can I still sell my property without perfecting the title?”

The short answer is yes you can, however, there will be some delay in the completion of the transaction and not getting the balance purchase price at the soonest opportunity for the following reasons:-

(a) Direct Transfer

In a sub-sale transaction, the timeline for the completion of the sale is usually 3 months from the date of the SPA.

However, in cases where you did not perfect the title, the completion date of the sale will be 3 months from the date the memorandum of transfer (Form 14A) is duly executed by Developer/Registered Proprietor and the original strata title is released by the Developer/Registered Proprietor to you. This is because the prospective buyer of your property would need to ensure that you can deliver legal ownership to them.

It might take some time for the Developer/Registered Proprietor to execute the

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transfer and deliver the strata title to you. Furthermore, you would have to comply with any terms and conditions imposed by them such as providing them all relevant documents and including payment of administrative charges to them.

The lengthy procedure will possibly deter any prospective buyer from purchasing your property or frustrate the prospective buyer, resulting in an aborted sale.

(b) Registration of charge documents

Besides that, if your prospective buyer is obtaining a loan to assist them in purchasing your property, the prospective buyer's end financier will not be able to release the loan to pay you until the strata title is registered in the name of the prospective buyer and charged to the end financier. Hence, this will cause further delay for you to receive your payment of balance purchase price from the end financier.

2. Costly and Complicated Process

(a) Developer/Proprietor wind-up

Should the developer go into bankruptcy, be wound up, or be liquidated and go into receivership, all of the property belonging to the Developer including the strata title will be vested and forwarded to the Liquidator.

In such cases, the prospect of perfecting the strata title may be cumbersome and complicated as you will now have to spend additional time and money to locate the liquidator/receiver appointed for the developer. In this scenario, it is quite common that the liquidator/receiver may not have the completed documents, such as the SPA, Loan documents, etc from the liquidated developer. Hence you would have to collate all the documents to prove that you are the purchaser of

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the property before the liquidator is able to execute the transfer form and release the original strata to you. On top of that, you would have to pay the liquidator/receiver and the liquidator/receiver's solicitor for any charges imposed by them.

In any event, if the strata title is missing or not delivered to the liquidator/receiver by the liquidated developer, you will be at the mercy of the liquidator/receiver as they are to apply to the land registry for a replacement title on behalf of the developer and you will not be able to do so by yourself.

(b) Estate

Similarly in another scenario, in the unfortunate event that you pass away without perfecting the title, it will complicate the process of administration and distribution of your assets to your beneficiaries.

There will be additional steps, documents, and sometimes costs involved, whereby the property will have to be transferred first from the developer's/registered proprietor's name to the executor/administrators before it can be registered/vested into the name of the beneficiary.

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3. Involvement in the Management Corporation

Living in a shared community is not easy, and being a registered owner of the property gives you the right to be involved in the management corporation in maintaining and managing the property you live in.

Only a registered proprietor as defined under the Strata Title Management Act 2013, has the right to attend, vote, and be voted to be a member of the management committee in the Annual General Meeting.

4. Storage Charges

There is no statutory obligation on the part of the purchaser to perfect their titles,¹ therefore some developers may resort to imposing “storage charges” or “late collection payments” if the purchaser did not come forth to collect their title for perfection within the specified period informed to ensure that the purchaser perfects the transfer and the developer do not need to store the strata titles in their possession for years.

Commentary

As seen from the above there are various shortcomings in not having a registered title. A title once registered is indefeasible. The purchaser will be faced with complications from various aspects and may end up paying more to perfect the title.

Authored by Venetia Wong Shin Yee, an associate with our Penang Office, specialising in conveyancing transactions.

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¹ Previously under the Strata Titles Act 1985, Section 40A(2), 40A(3) imposes a duty on the Purchaser to perfect their strata title within 12 months from the date of issuance of the strata title failing which they *shall be guilty of an offence liable to a fine of not less than one thousand ringgit and not more than ten thousand ringgit per parcel.*



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We are operating as usual and clients may pose any tax queries including those in relation to this alert via e-mail or telephone to:

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