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RECOMMENDATIONS

(Presented to YB Dr Tan Kee Kwong, Deputy Minister of Land & Cooperative Development on 12 June 2003 during the 'Mesyuarat Pendidikan Untuk Bangunan Bil 3/2003')

It is generally agreed that the current Strata Titles Act is difficult to understand. This is a problem for people who rely on it to determine their rights and duties. Many house buyers complained about the difficulties involved in obtaining from the developer, necessary documents in order to respond effectively to form an MC.

The management and maintenance of a subdivided property is the most important factor in ensuring the continued value and enjoyment of all. More assistance especially to purchasers/owners for the periods: a) before MC, b) transition from developer-controlled to owners-controlled c) MC controlled is needed, seeing the confusion that has arise especially from the purchasers' side.

It is not uncommon to find owners stress out with the rocky transition where the MC is moving from developer control to owners control. To make matters even worse, the relationship between the developer and the owners has often been strained considerably due to issues of poor management and maintenance and high contribution levies.

Here we make recommendations that could enhance the subdivided property's management and maintenance whether developer controlled or MC controlled.

RECOMMENDATION #1. Documents to be prepared by the developers for the First AGM

The current Strata Titles Act do not provide for the transfer of documents that are crucial for the Management Corporation in order for the MC to fulfill its role and obligation.

The developer must prepare three documents for the First AGM, which are:

1. Notice of the First AGM as set out in Section 41 of the Act
2. An annual budget of the Management Corporation, which details:
 - The opening balance in the management fund and sinking fund, which is the surplus or deficit from the year or partial year just ending;
 - The estimated income from all sources other than levied contributions, itemized by source;
 - A list of estimated expenditures from the management fund, including a list of all expenditures that relate exclusively to repair and maintenance of common property that the MC has taken responsibility for.
 - The total of all estimated expenditures from the management fund;
 - The total of all contributions to the management fund;
 - The total of all contributions to the special fund;

- Each parcel proprietor's monthly contributions to the management fund and the special fund;
 - The estimated balance in the management fund and special fund at the end of the fiscal year.
3. A financial statement, from the first day the management fund was set up. The financial statement must set out:
- The opening and current balance in the management fund;
 - The opening and current balance in the special fund;
 - The details of the MC's income from all sources, except special levies (if any);
 - The details of expenditures from the management fund, including details of any unapproved expenditures; and
 - Income and expenditures by special levy, if any.

RECOMMENDATION #2 – DOCUMENTS WHICH THE DEVELOPER MUST PRESENT AT THE FIRST AGM

At the First AGM the developer must give the MC copies of the following:

- all plans required to obtain a building permit and any amendments to building permit plans;
- any document in the developer's possession that indicates the location of pipes, wires, cable, chutes, ducts or other service facilities that are not located as shown on the plan or plan amendments filed with the local authorities/council;
- all contracts entered into by or on behalf of the MC;
- the registered strata plan as obtained from the land title office and plan amendments;
- the names and addresses of contractors, subcontractors and persons who primarily supplied labour or materials to the project;
- all warranties, manuals, schematic drawings, operating instructions, service guides, manufacturers documentation and other similar information relating to common property or common assets;
- minutes of special general meetings, including the results of any votes;
- a list of owners, with their parcel lot addresses, mailing addresses if different, parcel lot numbers as shown on the strata plan, parking lot numbers, if any, and unit entitlements;
- names and addresses of end-financiers;
- names of tenants;
- assignments of voting or other rights by parcel proprietors to tenants;
- books of account showing money received and spent and the reason for the receipt or expenditure;
- the Act and Regulations;
- a copy of the Management Corporation's bylaws and rules;
- any court decision in a proceeding in which the MC was a party, and any legal opinion obtained by the MC;
- income tax returns, if any;
- correspondence sent or received by the MC;

- bank statements, cancelled cheques and certificates of deposit;
- the MC's first annual budget for approval by the MC.

RECOMMENDATION #3 – AFTER THE FIRST AGM

The developer must do the following after the First AGM:

- within one week of the First AGM, transfer control of the MC's money, keys to the new MC Council
- ensure that the MC's insurance coverage continues for at least four weeks from the date of the First AGM; and
- deliver an updated financial statement to the MC within eight weeks of the First AGM. The updated financial statement must be updated to the date the new budget takes effect, or, if no budget was approved at the First AGM, the date of the First AGM.

RECOMMENDATION #4 – EXPENSES EXCEEDING BUDGET

During the period beginning one month after the set up of the management fund until the First AGM, if the actual management fund expenses exceed the estimated expenses, the developer must pay the difference to the MC within eight weeks of the First AGM.

RECOMMENDATION #5 – BUDGETS AND SPECIAL FUND

HBA believes it is imperative for all MC to adopt and use a financial planning and budget process which accurately reflects projected annual operating cost and long-term capital or major expenses (special fund) and results in a balanced budget. HBA believes that the developer and developer-controlled management should prepare and disclose the initial budget to assure accurate estimation of projected operating costs and special fund. HBA also supports full and open disclosure to owners and the opportunity for participation by owners in the development of the budget.

Purchasers have the right to know their contributions to the management fund from the onset and not rely on the "fair and justifiable" proportion. As the amount determined is the actual is the amount sufficient for the actual maintenance and management of the common property, it is fair that purchasers know in advance what their contributions entail.

The revamped Schedule H of the HOUSING DEVELOPERS DEVELOPMENT (CONTROL AND LICENSING) REGULATIONS 1989 provides for a service charge statement form (Fifth Schedule of Schedule H). This should be seen as a projected budget and estimated contributions to the management fund for each owner. Unfortunately, we have received complaints that this form has been left unfilled at the signing of Sale and Purchase Agreement.

We also recommend that the service charge statement and any increase be approved by the Controller of Housing or relevant authority.

Question: What is the comment of the Ministry of Housing & Local Government on this abuse or misguidance?

RECOMMENDATION #6 – BETTER PROPERTY MANAGEMENT

HBA encourages the national certification of property managers.

- We recommend the mandatory qualification, registration, and licensing of strata property managers.
- We recommend a course in the physical maintenance of buildings should be a part of the required training for property managers.
- We do not recommend that licensed real estate agents/valuers as property managers.

RECOMMENDATION #7 – HELP FOR ORPHANED PROJECTS

HBA recognizes that successful transition is the responsibility of the developer. However, it is not uncommon to find projects that the developers are not able to proceed with the application of the strata titles leaving the owners in a lurch. It is assumed that developers would voluntarily comply with the Strata Titles Act to apply for the titles. In cases where developers have deliberately dragged their feet or caused themselves to be liquidated before transferring the titles to the owners, there is no provision in the Act to ensure that the subdivided building can be managed and maintained properly by the beneficial owners.

Question: What is Ministry of Land & Cooperative Development's guideline/rule on this?

RECOMMENDATION #8 – COMPLETION OF COMMON FACILITIES

Clause 28 of Schedule H allows for claims on LAD on the common facilities if there is delay. However, unlike the delivery of vacant possession of the Building, there is no provision for architect's certification of the completion of the common facilities. Although the defects liability period as set out in Clause 28 of Schedule H allows for developer to repair and make good the defects at their own cost and expenses, there is no legal entity at the onset to see to this except for individual purchasers who often do not know about this right. Effort must be made to see that the purchasers are not short-changed in this by creating an association of buyers' right from day one.