



ASLI QoL 2022



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10th AMER International Conference on Quality of Life
Shangri-la Rasa Sayang, Malaysia, 16-17 Mar 2022



Ownership Issues of Old-Stratified Scheme: Failure factors of Strata Title application

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Abstract

A special building is representing the old-stratified scheme occupied before June 1996 or from June 1996 to 11 April 2007 as stated in Strata Titles Act 1985. It is highlighted for the absence of strata title that is resulted from the failure of strata title application. However, even strata title legislation relating to strata title application are improving, the number of strata title applications for special building are still showing deficiencies. Hence, this paper attempts to explain the factors that contributing to the failure of strata title applications for special buildings in Malaysia.

Keywords: Special Building; Strata Title Application; Factors; Failures

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DOI: <https://doi.org/10.21834/ebpj.v7i19.3263>

1.0 Introduction

The migration of people from rural to urban areas to look for job opportunities has led the increase of the urbanization rate that has necessitated the creation of more new areas for residential, public amenities, commercials, and other urban land uses (Zhang, 2016). Consequently, it has resulted in land scarcity in urban areas. Hence, to meet the current social growth and demands of urban populations and mitigate the shortage of residential development, stratified development is developed in the urban areas. Stratified development is a vertical living that offers different types of property ownership in one building.

In Malaysia, stratified development may emerge from the early 1970s, when the National Land Code 1965 introduced Strata Titles, which the Strata Titles Act later administered in 1985 (STA 1985). The STA 1985 has undergone several modifications and amendments to meet the current demands. However, despite its modifications and amendments, one of the most significant current issues in stratified development is the non-issuance and transference of strata title to the purchaser for old-stratified scheme. Hence, special building has been articulated in STA 1985 that representing the old-stratified scheme occupied before June 1996 or from June 1996 to 11 April 2007 through the Strata Titles (Amendment) Act 2007 (A1290). With the abundance of stratified buildings in developed areas such as the Federal Territory of Kuala Lumpur, Selangor, and Penang, both the government and private sectors, including purchasers, are experiencing difficulties and challenges because of the non-issuance and transference of strata titles from the original proprietor or developer to the purchaser. The said old-stratified schemes are regarded as any building built ten (10) years before the amendments of A1290 on 12 April 2007. Therefore, this paper attempts to outline the factors that contributing to the failure of strata title application for special buildings in Malaysia to look forward to the best and most practicable solutions regarding the strata ownership issues. Hence, the

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failure factors of strata title application for special building identifies the loopholes of previous legislation that have contributed to the special building in Malaysia. The loopholes would be shown through the amendments of STA 1985 that will be explained in the literature review.

2.0 Literature Review

2.1 Strata Concept

Strata is a concept that is based on the vertical subdivision of a building and/or lands rather than the traditional horizontal subdivision of a building and/or land. According to Ngo (1987), a strata scheme demonstrates the separate ownership of each unit and has common ownership of the land and common parts of the building. The property titles of each unit are assigned separately, which implies that each unit is taxed and financed on its own. Meanwhile, according to Easthope and Randolph (2014), when the rights and interests in a piece of property are transferred from the original proprietor to more than one owner, a strata scheme is known as multi-owned property that is subdivided vertically and issued the titles for each unit through the strata title mechanism. When people purchase stratified property, the property simultaneously creates the dualistic forms of property ownership (also known as the two-tier form of ownership), which are individual ownership of purchasing unit and common property ownership (also known as joint ownership of land and common parts of the building) (Troy et al., 2016; Easthope and Randolph, 2014; Easthope et al., 2014; Lujanen, 2010; Clarke, 2007). In a nutshell, the interior of each strata unit belongs to each parcel owner (Easthope and Randolph, 2014).

In 2014, Babalola et al. demonstrated clearly in their study what individual ownership is. The study portrayed the individual titles are issued upon approval of the subdivision of a building and/or land into separate parcels. This is supported by Everton et al. (2006), who described the strata subdivision as subdividing a building and/or land into strata and/or land parcels that are owned by parcel owners (purchasers). Furthermore, each parcel owner has the right to dispose of his or her property without impacting the other parcel owners. He or she can modify, transfer, lease, mortgage the property just like other landed property. In addition, according to Weir (2018) and Easthope et al. (2014), the parcel owner of individual ownership of the property is registered as indefeasible owner as strata title legislation creates a registered title to land and prohibits restrictions on transfer, lease, or mortgaging of an individual unit.

According to STA 1985, strata title is the title issued in respect of parcels or units in a building having two (2) or more stories or subdivided land on which there is a completed building of not more than four (4) stories when the proprietor of the land on which the subdivided building or subdivided land, applies for strata subdivision and the application is approved by the authority. The term 'lot' of subdivided buildings or land is called 'parcel' and common property. The purpose of the STA 1985 is to legalize the subdivision of land or buildings into strata parcels, accessory parcels, provisional blocks, and common property, thereby granting ownership and usage of space of any shape below, on, or above the surface of the land to several individuals (Shukri, 2011). With this legal concept, any original proprietor or developer is capable of constructing multi-stories buildings, subdividing them on both the horizontal and vertical axes, issuing individual titles in respect of the subdivided parcels, and selling them to various individuals, resulting in the creation of urban development with multiple owners sharing a single plot of land (Christudason, 1996).

2.2 Special Building Background

The previous legal flaws have resulted in the existence of properties without strata title. Therefore, STA 1985 has undergone several amendments to overcome the lacunae in previous strata title legislation and regulation. In regards to the purchasers of the old-stratified scheme that have confronted the crisis and obstacles when their titles of ownership are not issued, Strata Titles (Amendment) Act 2007 (Act A1290) followed by the Strata Titles (Amendment) Act 2013 (Act A1450) and Strata Titles (Amendment) Act 2017 (Act A1518) are amended. These amendments have construed the special building. A special building is an old-stratified scheme 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.

Act A1290 is amended to construe the original proprietor to apply strata title for special buildings. However, due to the deficiencies number of strata title applications, the definitions of the special building in Act A1450 and Act A1518 are enhanced. By Act A1518, the Department of Director General of Land and Mines Malaysia (JKPTG) has issued Circular No. 5/2017: Strata Title Application for Special Building to advise all State Director of Land and Mines Office (PTG) and Land Administrators regarding strata title application for special building. According to the circular, the State Authorities are recommended to implement any regulation or guideline in States Strata Title Rules to define and classify the old-stratified building as a special building. However, even the strata title legislation is improved through several amendments of Act A1290, Act A1450, and Act A1518, the parcel registrations for the special buildings have continued to exhibit a non-significant increase over the previous year (Izanda et al., 2021). It can be proved through the statistical data as presented in Table 1 below. According to the table below, Selangor and the Federal Territory of Kuala Lumpur present the highest number of unregistered parcels for special buildings.

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

Unregistered Strata Title for Special Building		
States	Schemes	Parcels
Kelantan	1	40
Federal Territory of 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
Federal Territory of Kuala Lumpur	541	19,814
Selangor	149	53,829
Total	901	96, 546

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

The study discovered that any old-stratified scheme could be classified as a special building by looking at the time ranges of when the building was occupied (Figure 1). It can be manifested through the provisions in the amendments of Strata Titles (Amendment) Act 1996 (Act A951), and Act A1290 implemented on 2 August 1996, and 12 April 2007, respectively. According to the previous study by Izanda et al. (2021), the comparison of the provisions in both amendments identifies the key change, which is a major indicator that presents the source of the power of strata title application process for special building as shown in Table 2. It posits only one (1) key change; the compulsory transfer of ownership of strata title.

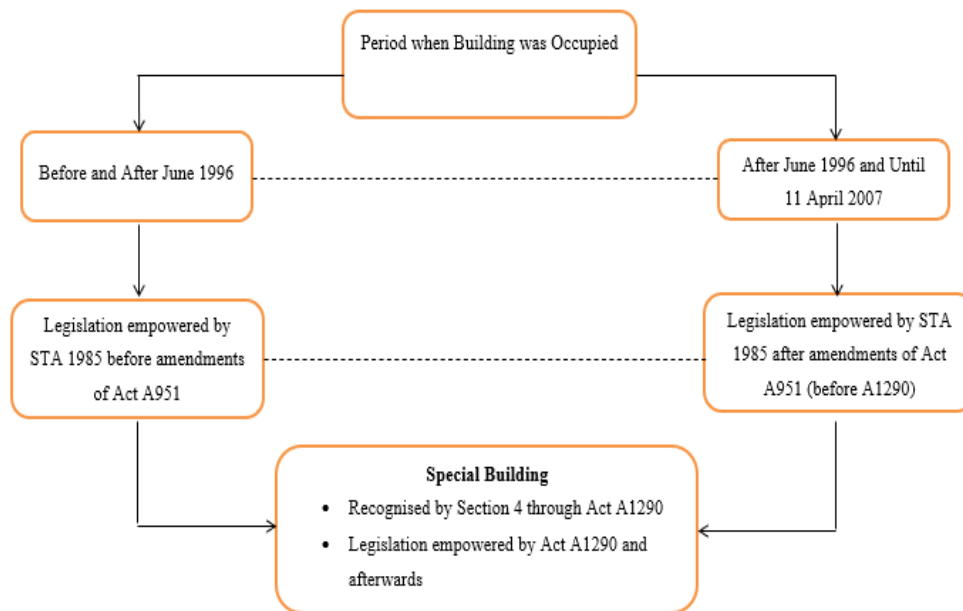


Figure 1. Time Ranges of Special Building
(Source:) Author's Analysis (2022)

When it comes to the responsibilities and roles of the original proprietor or developer when it comes to transferring the strata title to the purchaser, there is no provision indicated in the provisions before and after Act A951. The shortcomings of the amendment serve as a foundation and indicator of the inadequacies and insufficiencies of previous strata title legislation, which have resulted in the non-issuance of strata title phenomenon, which occurs when the original proprietor or developer fails to apply strata title. Therefore, the enhancement is made under Section 40A of Act A1290 which the original proprietor or developer must transfer the strata title to each purchaser within 12 months of the date on which the strata title is issued by the Land Administrator.

However, the provision of Section 40A is replaced by Section 19A through Act A1450. It stated that the original proprietor or developer is compulsory to transfer the strata title to the purchaser within 30 days of the date on which the strata title is issued by the Land Administrator. The original proprietor or developer that fails to transfer the strata title within the period given will be fined at least RM 1,000.00 but not more than RM 10,000.00 for each parcel. Then, Section 19A is removed from the Act through Act A1518. Hence, the roles and responsibilities of the original proprietor and developer to transfer the strata title to purchaser (or to make the perfection of

transfer) are empowered under Schedule H of Housing Development (Control and Licensing) Act 1966 (Act 118) and Housing Development (Control and Licensing) Regulations 1989. Any original proprietor or developer that fails to make the perfection of transfer to purchaser can be filed through the Tribunal for Homebuyer Claim (TTPR). STA 1985 is designed to impart the strata title processes and procedures for the issuance of strata title.

Key Changes	Amendments Provision (Before and after Act A951)	Amendment Provision (Act A1290)
Compulsory Transfer of Ownership of Strata Title	NIL	New Section 40A: 1) Any original proprietor or any person or body appointed by a court of competent jurisdiction shall execute the transfer of strata title to purchaser within 12 months from the date of issue of strata title by Land Administrator or any extended period approved by the Director of Land and Mines Office upon the opening of strata register. 2) Any purchaser shall execute complete documents of transfer of strata title within 12 months or any extended period by the Director of Land and Mines Office from the date of notice of transfer of strata title issued by the original proprietor or from the date of purchase of parcel, whichever is later. 3) Any original proprietor or any person or body appointed by a court of competent jurisdiction or any purchaser who fails to comply with subsection (1) or (2) shall be guilty of an offense and shall be liable to a fine of not less than RM 1,000.00 and not more than RM 10,000.00 per parcel.

Table 2. The Key Changes of Amendments Before and After Act A951 and Act A1290
 (Source:) *Book of Malaysian Strata Titles: Law and Procedure (2010)*

2.3 Strata Title Application Process for Special Building

The strata title application process is administered by four (4) legal provisions, which are STA 1985, the circulars of JKPTG and Director General of Survey and Mapping Malaysia (JUPEM), and States Strata Titles Rules. STA 1985 is the predominant and pivotal strata title legislation and regulation that is being enforced in Peninsular Malaysia, including the Federal Territory of Labuan, and has been in effect since 1 June 1985, to overcome a shortage caused by previous legal provisions by the National Land Titles Act 1965 (NLC 1965) concerning subdivided buildings (Izanda et al., 2021). The stipulations of Sections 9 and 10 of STA 1985 have contributed to the problems encountered throughout the process of acquiring a strata title. The State Director of PTG and JUPEM are the primary authorities in charge of processing strata title applications and registration. The strata title application could be made by the original proprietor unless there is a court decision for the application to be submitted by other parties other than the original proprietor.

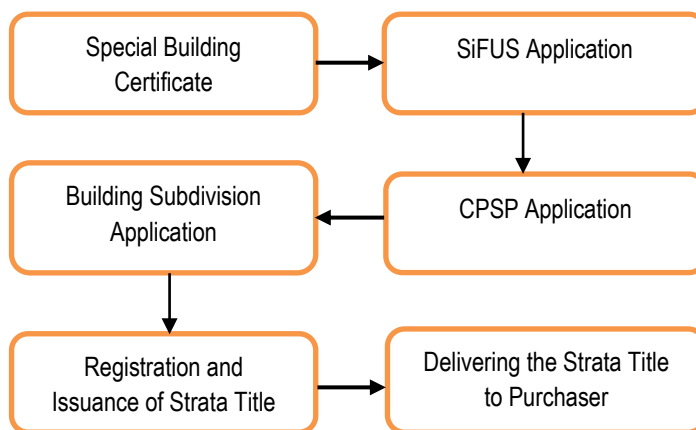


Figure 2. Simple Workflow of the Strata Title Application Process for Special Building
 (Source:) *Author's Analysis (2022)*

A special building is an old-stratified scheme that is insufficient with several technical and important documents that are needed in a strata title application. Therefore, some provisions are amended through Act A1518 to allow the original proprietor or developer to apply for strata title with the exemptions of several technical documents for Certificate of Proposed Strata Plan (CPSP) and building subdivision applications. The provisions of Section 8A (1) (e) and (h) and Section 20A (1)(e) and (i) are amended to preclude the development order for special building and allow the as-built plan to be certified by a Professional Architect or Professional Engineer including a Licensed

Land Surveyor that the building has been constructed by the original plan and specifications. Meanwhile, the provisions of Section 9 (1) (h) and Section 20B (1)(e) exclude the Certificate of Fitness for Occupation (CFO) or Certificate of Completion and Compliance (CCC). These documents can be excluded by the Director of Survey and Land Administrator.

Any building that was occupied before Jun 1996 is automatically classified as Special Building. Meanwhile, the building that was occupied after Jun 1996 until 11 April 2011 needs to apply for a Special Building Certificate with the related PTG. According to REHDA (2016), the original proprietor or developer requires to obtain the Certificate of Share Unit Formula (SiFUS), which is to be issued by PTG before undergoing a CPSP application. The original proprietor or developer must also submit the proposed strata plan for approval by the Director of Survey to obtain the CPSP and then submit the application for building or land subdivision to the appropriate State Director of Lands and Mines for registration of strata title.

A failure to comply with the approval of the CPSP requirement will result in an expedited subdivision of building in the strata title registration procedures, which will be the crucial step in the process before transferring the strata title to each purchaser. Figure 2 below presents the simple workflow of the strata title application process for special buildings.

3.0 Methodology

The research is qualitatively in nature, and the data collection technique is conducted using in-depth interviews with respondents from different organizations and groups of people from government sectors and professional bodies. The respondents are selected based on their deep knowledge, experiences, opinions, and perceptions in strata title legislation and regulation. The research applies face-to-face in-depth interviews through semi-structured interview forms containing structured and unstructured sections with standardized and open-type questions. Furthermore, secondary data collection is also adopted in this research. The secondary data provides the existing data that assists the designation of the literature part consists of legal materials such as acts, government circulars, and electronic media materials relating to previous and latest strata title legislation and regulation. Since this research is exploratory, it is in line with qualitative research because it facilitates the new issues and problems discovered during the research process.

In-depth interviews are conducted among respondents from JKPTG, Penang Land Office and Mines (PTGPP), Selangor Land and Mines Office (PTGS), and Federal Territory of Kuala Lumpur Land and Mines Office (PTGWPKL) and licensed land surveyors. These respondents are directly involved in processing the strata title application and registration. The research employs the purposive sampling and snowball technique to determine suitable respondents, as described in Table 3. The results then are analyzed using descriptive analysis to interpret the problems and issues to determine the factors that contributing to the failure of strata title application for special buildings in Malaysia. The data are examined descriptively to notice similarities and differences between the data obtained through the interviews. The data is interpreted to provide the specific perspective based on the strata title practitioners' experience. Hence, the study will clearly identify the factors that contributing to the failure of strata title application for special building.

Table 2. List of Respondents Involved

Profession	Respondents	Quantity
Government Sectors	Department of Director General of Land and Mines Malaysia (JKPTG)	1
	Penang Land Office and Mines (PTGPP)	2
	Selangor Land and Mines Office (PTGS)	2
	Federal Territory of Kuala Lumpur Land and Mines Office (PTGWPKL)	3
Professional Bodies	Licensed Land Surveyors	1

4.0 Findings and Discussions

According to DGLM (2021), the failure factors of strata title application for special buildings are due to land matters issues (such as strata scheme is not in the same lot, breach of land condition, the land title still in the qualified title, and land tax arrears), original proprietor or developer issues (such as bankruptcy, passed away or financial problems), building issue (such as building structure exceeds the boundary of the lot) and the absence of technical documents that required for strata title application. Similarly, Mahmood (2018) found that a special building is highlighted as the building that bears the land matters issues, the issues of building itself, and financial problems. Therefore, the factors perceived are categorized into two (2); land matters and original proprietor or developer issues.

The original proprietor or developer that fails for applying strata title due to some circumstances related to land legal matters such as the subdivided building is not under the same land lot, land mortgage has not been released by financial institutions, the express condition or category of land is contrary to existing development, land title is still under-qualified title and unpaid land tax arrears. Therefore, SiFUS as the strata title pre-application is implemented to inhibit the issues related to land matters.

The original proprietor, as the landowner, is responsible to apply strata title for subdivided buildings and/or land. However, in certain cases, the failure to apply strata title for the special building is due to the dormant or passed away original proprietor. In the case of the wound-up developer as the original proprietor, the purchaser needs to appoint the liquidator to proceed with the strata title application. However, the purchaser is required to apply the court order for the appointed liquidator to apply the strata title on behalf of him or her, which could involve high legal costs and take a long time-consuming for strata title issuance. The purchaser must pay an unreasonable administrative cost of 2 to 3 percent of the property purchased price to an appointed liquidator to draught the related documents. The fee covers the liquidator's costs in obtaining the purchase documents that the developer allegedly destroyed, misplaced, or damaged and verifying them with the purchaser's purchase proofs.

The failure of strata title application for special buildings also related to the refusal of certain Local Authorities to certify as-built plans prepared by licensed land surveyors despite being instructed by the Secretary General of the Ministry of Housing and Local Government. The reason why they refuse to certify as-built plans prepared by licensed land surveyors is that they do not want to bear the risks and liabilities that may arise from the certification as licensed land surveyors are not included in the interpretation of the main person submitting, the person submitting and the person qualified under Street, Drainage and Building Act 1974 (Act 133).

5.0 Conclusion & Recommendations

The establishment of Strata Titles Special Fund (TKHS) in 2017 is intended to solve the financial problems faced by selected special building schemes throughout Peninsular Malaysia. However, the fund is still insufficient to assist every special building scheme in getting the strata title because the costs to be borne are high. The allocation under this fund only primarily focuses on the low-cost housing category. Therefore, deep research needs to be carried out to ensure strata title application can be applied by the purchaser, which can reduce the difficulties and burden of paying the legal fees to obtain the court order to appoint a liquidator. Furthermore, STA 1985 also needs to be enhanced and amended to allow the local authorities to certify the as-built plan prepared by licensed land surveyors. In addition, some certain original proprietors or developers seek not to pursue strata title applications if it incurs additional costs and time to them. Therefore, the implementation of the fines on failure or delaying to apply for CPSP or building and/or land subdivision by the original proprietor or developer needs to be implemented to mitigate the absence of strata title of the purchased property.

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