

FORMATION OF STRATA CORPORATION

Presentation

The Registration of Strata Titles Act governs the law in relation to what may be called a condominium/apartment, a collective ownership and living.

The trend has been towards this form of development especially within the corporate area, due to:-

- increased land costs
- limited supply of land suitable for single family detached dwellings
- security considerations.

With a strata development one does not need to seek subdivision approval under the Local Improvements Act. The Strata Titles Act itself provides for the subdivision of registered land into strata lots in accordance with a strata plan that must be registered at the Titles Office.

The strata plan must be prepared by a Commissioned Land Surveyor and can only be accurately prepared when the building is up to belt course because it is at that point that, the spatial relationships between the various apartments have been physically established.

After a Strata Plan has been prepared by a Surveyor it will need to be submitted to the Kingston and Saint Andrew Corporation (KSAC) or relevant Parish Council for approval and it is only after the Plan has been stamped with that Approval that it can be submitted to the Titles Office for registration.

Thereafter by lodging the Strata Plan at the Office of Titles, the developer can proceed to apply to splinter the Title for the property into individual titles for the strata lots depicted on the Plan.

One or two practical words of caution before proceeding to strata property. You should in all cases -:

(a) ensure that the Restrictive Covenants endorsed on the Title permit the subdivision of the land into Strata Lots. If they don't then you would need to make an application to the court to have them modified to permit such division of the land.

(b) have a Surveyor do a Surveyor's Identification Report of the property to ensure that there are no boundary discrepancies that need to be rectified.

Formation of Strata Corporations

Once the Strata Plan is registered, the owners of the strata lots automatically become a body corporate called "the Proprietors Strata Plan No. _____. With a new complex therefore, until the first unit is sold, the Developer would constitute the Proprietors Strata Plan No. _____. The Act places a number of duties and obligations on the Corporation and it is the Corporation that is really the managerial vehicle for the complex.

BY- LAWS

The use, maintenance and enjoyment of the property comprised in every Strata Plan is governed by a set of rules called "by-laws". These by-laws (set out in the First and Second Schedules to the Act) come into force immediately on the registration of the Strata Plan and remain in force unless amended or altered by unanimous resolution in the case of those set out in the First Schedule and by the Corporation in the case of those set out in the Second Schedule. This is an area to which not enough attention is usually paid by developers. Here is an opportunity to tailor the rules that govern conduct in the property to suit the particular circumstances. **Consider easements**

Problems arising in relation to Management of Strata Properties

Over the years a number of problems have arisen in relation to the management of strata properties and the Government appointed a committee to review the Act and make recommendations. Unfortunately none of these recommendations have as yet been passed into law.

The committee considered a number of issues, the more salient ones being –:

- The non payment of maintenance fees by owners
- The difficulty of obtaining unanimous resolutions in matters where they are required under the Act
- The absence of a body to monitor the functioning of Strata Corporations.
- Establishment of a Reserve Fund
- Notification re change of ownership of strata lots.

1. Non-payment of maintenance fees by proprietors

This has been one of the chief problems affecting such properties. The non-payment of such fees often leads to non-payment of insurance premiums, arrears in utility bills, and neglect in the upkeep of the common facilities. All of this of course results in the deterioration in the value of the strata properties. The Act provides for the Corporation in such cases, to recover the money in an action brought in any court of competent jurisdiction. This however is an inadequate remedy as it often takes months for such matters to come on for trial and even after a judgment is obtained there is the time that is required to enforce it.

The Government had proposed to amend the Act by providing that where maintenance fees were owed for a period exceeding thirty (30) days –:

- a caveat could be lodged against the Title for the Strata Lot
- the creation of a statutory charge under which the arrears would constitute a charge (conferring a power of sale on the Strata Corporation) on the Strata Lot of the delinquent owner.
- the Corporation could charge interest on the arrears of such fees

None of the amendments proposed above have as yet been incorporated into the existing legislation.

2. Unanimous Resolutions

Another problem faced by Strata Corporations is that under the Act there are a number of matters that requires the unanimous approval of all the proprietors of

all the Strata Lots in the complex.

The Act presently provides that only a unanimous resolution can authorize Strata Corporation to -:

- a. insure for risks other than fire, earthquake, hurricane
- b. not insure the buildings for replacement value against fire, earthquake and hurricane
- c. amend or vary its by-laws
- d. transfer or lease any part of the common property
- e. execute a grant of easement or restrictive covenant
- f. declare the building destroyed

This creates a very real problem because the absence or opposition of even one proprietor means that the decision cannot be taken. Most Corporations are affected by proprietors who reside overseas and neither attend meeting nor designate proxies. In any event, if even one person is oppose to the resolution it will fail. A unanimous resolution is in most cases very difficult to obtain.

The Government proposed that -:

- a. except for decisions required in respect of insurance, a resolution is to be regarded as passed, if, at a duly convened meeting of the Strata Corporation all those persons entitled to vote under the Act who are present either personally or by proxy vote in favour of the resolution, and those other persons not in attendance subsequently agree to it in writing. These latter persons would be served with a notice of the resolution and would be required to signify their agreement either personally or by proxy.
- b. Decisions taken relating to insurance are to be by a "special" resolution. A special resolution for this purpose would be a resolution passed at a duly convened meeting for which at least twenty eight (28) days notice has been given by all proprietors attending and voting or voting by proxy, provided that those voting in favour of the resolution represent not less than 66 2/3% of all the proprietors eligible to vote.

These suggested amendments however have not as yet been made to the existing Act.

3. Monitoring of Strata Corporation

Under the existing Act, there is no machinery set up to monitor the functioning and effectiveness of the management committees of Strata Corporations or to arbitrate in disputes involving strata properties.

The Government proposed that the Act be amended to provide for the Real Estate Board to act as a Commission of Strata Titles and to provide for the functions of such Commission to include among other the following -:

- the monitoring of Strata Corporations the resolution of disputes the enforcement of byelaws.
- To facilitate this monitoring process the proposal went further to recommend that the Act provide for the compulsory registration of strata corporations with the Commission.

These amendments have not as yet been made to the existing Act.

4. Notification of Change of Ownership

Under the Act as presently worded, a proprietor is required to notify the Corporation upon any change in ownership of his lot or of any mortgage or other dealing with his lot. Apparently very few owners comply this requirement and the Corporation is left in the position of not knowing the identity of all the owners in the complex or their mortgagees.

The proposal put forward by the Government is to amend the Act so as to put the onus in the cases of changes in ownership of the strata lot, on both the Transferor and Transferee in such transactions, to advise the Corporation of such changes, giving details as to full names of both parties and the address for service on the Transferee.

This amendment however has not as yet been made to the existing Act.

5. Reserve Fund

Under the present Act the Strata Corporation does not have the power to establish a reserve fund to deal with expenses other than those of a routine nature.

The Government proposal was to establish a fund to be known as a Revenue Fund into which would be paid two and one-half percent (2½%) of annual contributions. This fund would be used to cover the costs of major repairs to or renovation of the common property in the complex on the outer walls of a Strata Lot.

Up to the present time this amendment has not been made to the Act.