

UPDATE ON LEGISLATIONS RELATING TO STRATA DEVELOPMENT

By Andrew Wong*

PART 1

PRELIMINARY

1. Latest legislations and its effect

- 1.01 In 2012, during the 24 September to 29 November sitting of the House of Representatives and the 3 December to 20 December sitting of the Senate, Parliament passed the Strata Titles (Amendment) Bill 2012 and the Strata Management Bill 2012.
- 1.02 The Strata Titles (Amendment) Act 2013 was published in the Gazette on 7 February 2013 as Act A1450 and the Strata Management Act 2013 was published in the Gazette on 8 February 2013 as Act 757. Both Acts (the latest legislations) have yet to come into force.
- 1.03 These two latest legislations will make very significant changes to the laws relating to strata development and common property management and will affect many people who live in, or do business in, strata-titled properties like apartments, condominiums and shopping complexes.
- 1.04 Currently, there are about 14,998 strata development areas occupied by approximately 5.9 million citizens.¹ The population of Malaysia is about 28.3 million.² If you disregard Sabah (3.21 million), Sarawak (2.47 million) and Labuan (0.09 million), the population of Peninsular Malaysia (11 States, Federal Territories of Kuala Lumpur and Putrajaya) is about 22.53 million.
- 1.05 This means that strata legislations affect about 26% of the population in Peninsular Malaysia.

2. Features of the latest legislations

- 2.01 Before the latest legislations come into force, maintenance and management of strata-titled properties are currently regulated by two separate legislations –
 - (a) the Building and Common Property (Maintenance and Management) Act 2007 (Act 663), for a building intended for subdivision and before the management corporation comes into existence; and

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¹ Hansard Dewan Negara (19 Dec 2012) – Hon. Minister's speech.

² Population & Housing Census 2010.

- (b) the Strata Titles Act 1985 (Act 318), for a subdivided building and after the management corporation comes into existence.

2.02 When the latest legislations come into force –

- (a) some parts of Act 318 on management of a subdivided building will be carved out and deleted;
- (b) Act 663 will be repealed and some of its provisions will be re-enacted with amendments;
- (c) those parts of Act 318 that are carved out and the re-enacted provisions of Act 663 are combined into a single legislation, that is the Strata Management Act 2013 (Act 757).

2.03 The latest legislations will –

- (a) expedite the application for subdivision of a building or land and the issue of strata titles;³
- (b) pave the way for delivery of vacant possession of housing accommodation only when strata titles have been issued;⁴
- (c) require a developer to file a schedule of parcels before any sale of a parcel in a development area intended for subdivision into parcels;⁵
- (d) permit the designation of limited common property and the creation of subsidiary management corporations in a two-tier management corporation scheme;⁶
- (e) provide for a compulsory damage insurance policy to be taken out by the person who has a duty or is responsible to maintain and manage any building;⁷
- (f) establish a new Strata Management Tribunal to hear and determine disputes relating to strata-titled properties;⁸
- (g) provide for a presumption to be made in respect of any alleged defect in a parcel situated immediately above another parcel.⁹

³ Section 9 Act 318, as amended.

⁴ Housing Development (Control and Licensing) Regulations 1989, to be amended.

⁵ Section 6(1) Act 757.

⁶ Section 17A Act 318, as amended.

⁷ Section 93 Act 757.

⁸ Part IX Act 757.

⁹ Section 142 Act 757.

PART 2

STRATA TITLES (AMENDMENT) ACT 2013 (ACT A1450)

3. Background of strata titles legislation

- 3.01 The Malaysian concept of subdividing a building was imported from New South Wales, Australia and was first introduced in Peninsular Malaysia on 1 January 1966 by the National Land Code, 1965 ("NLC").
- 3.02 A brief history of the strata title legislations in Peninsular Malaysia (including Kuala Lumpur and Putrajaya) is set out in Table 1.

Table 1 - History of strata title legislations

Year	Act	Main features
1 Jan 1966	NLC 1965 (Act 56)	Subsidiary titles for units in a subdivided building.
1 June 1985	Strata Titles Act 1985 (Act 318)	Facilitate subdivision of a building into parcels to be held under separate strata titles.
23 Feb 1990	Act A753	Introduce provisional strata title for a provisional block in a phase development and other amendments.
2 Aug 1996	Act A951	Permit application for strata titles with a qualified title for lot of land, and other amendments.
1 Dec 2001	Act A1107	Introduce the Strata Titles Board and other amendments.
12 April 2007	Act A1290	Introduce land parcels and other amendments in line with the enactment of Act 663.

4. Summary of Act A1450 (2013 Amendments)

- 4.01 Altogether there are about 45 main amendments and many other consequential amendments largely made to complement the provisions of the new Act 757.
- 4.02 The notable 2013 Amendments are set out in Table 2.

Table 2 – Notable 2013 Amendments

No.	Amended/ New section*	Effect
1	2	Extend Act 318 to Labuan (previously only P. Malaysia including Kuala Lumpur & Putrajaya).
2	4B*	Electronic Land Administration System.
3	8	Application to subdivide a building at super structure stage (previously when a building is completed).
4	8A*	Certificate of proposed strata plan.
5	9A*	Allow issue of provisional strata title for a provisional block in respect of land parcels (previously under s. 10, now deleted, no land shall be included in application for issue of a provisional strata title for the provisional block).
6	17	Provide for establishment of management corporation (previously s. 39 in Part VII, now deleted).
7	17A*	Designation of limited common property and creation of subsidiary management corporation.
8	19A*	Replace s. 40A, now deleted. Time period to transfer strata title reduced from 12 months from date of issue to 1 month from the date of issue.
9	57(4)	Distribution of profits on termination of subdivision based on open market capital values of parcels (previously based on share units).
10	Part IXA	Deleted. Strata Titles Board replaced by Strata Management Tribunal established under the new Act 757.
11	Second Schedule and Third Schedule	Deleted. Provisions for management corporation and by-laws now under the new Act 757.

- 4.03 This paper will deal with two important practical issues arising out of the 2013 Amendments:
- (a) the changes in circumstances in which it is compulsory to apply for subdivision of a building or land; and
 - (b) the designation of limited common property and the creation of subsidiary management corporations.

PART 3

CHANGES IN CIRCUMSTANCES FOR COMPULSORY SUBDIVISION OF BUILDING OR LAND

5. Compulsory application for subdivision of building or land

- 5.01 Compulsory application for subdivision of a building or land is only required if the proprietor of an alienated land has sold or agreed to sell any parcel in a building or any land parcels.
- 5.02 Before the 2013 Amendments, the time period to apply for subdivision is extremely confusing, but generally –
- (a) if a sale is made before completion (with CFO)¹⁰ or erection (with CCC)¹¹ of the building or land parcels, the application for subdivision of the building or land is required to be made within six months from the date of completion (with CFO) or erection (with CCC); and
 - (b) if a sale is made after completion (with CFO) or erection (with CCC) of the building or land parcels, the application for subdivision of the building or land is required to be made within six months from the date of the sale.
- 5.03 When the 2013 Amendments come into force, an application for subdivision shall be required to be made before the building or land parcels are completed, and the application for subdivision shall be made in two stages –
- (a) **First stage:** to apply for a certificate of proposed strata plan¹²; and
 - (b) **Second stage:** to apply for subdivision within a period of one month from the date of issuance of the certificate of proposed strata plan.¹³

See Illustration 1.

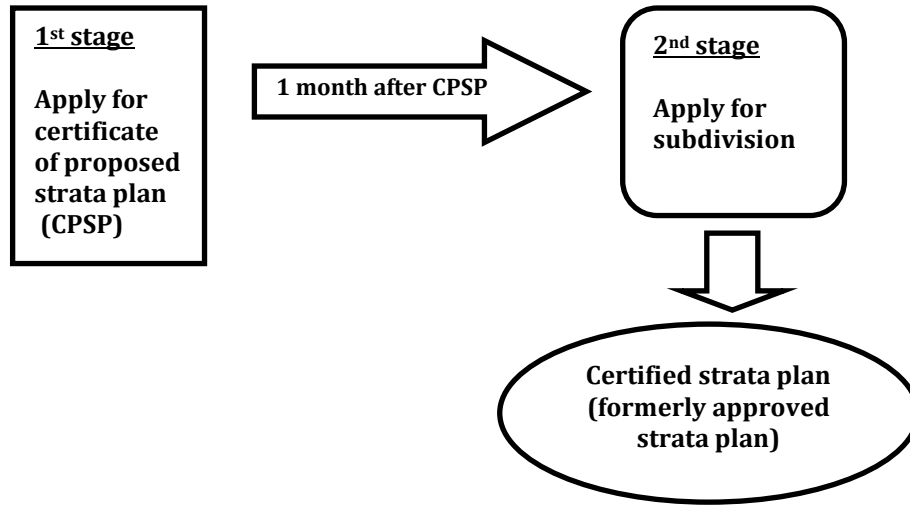
¹⁰ Certificate of fitness for occupation as defined in ss. 8(2) and 8(8)(a) Act 318, which will be deleted.

¹¹ Certificate of completion and compliance as defined in ss. 8(4) and 8(8)(b) Act 318, which will be deleted.

¹² Under s. 8A(1) Act 318, as amended.

¹³ Under s. 8(3) Act 318, as amended.

Illustration 1



5.04 The time period within which to apply for the certificate of proposed strata plan are set out in Table 3.

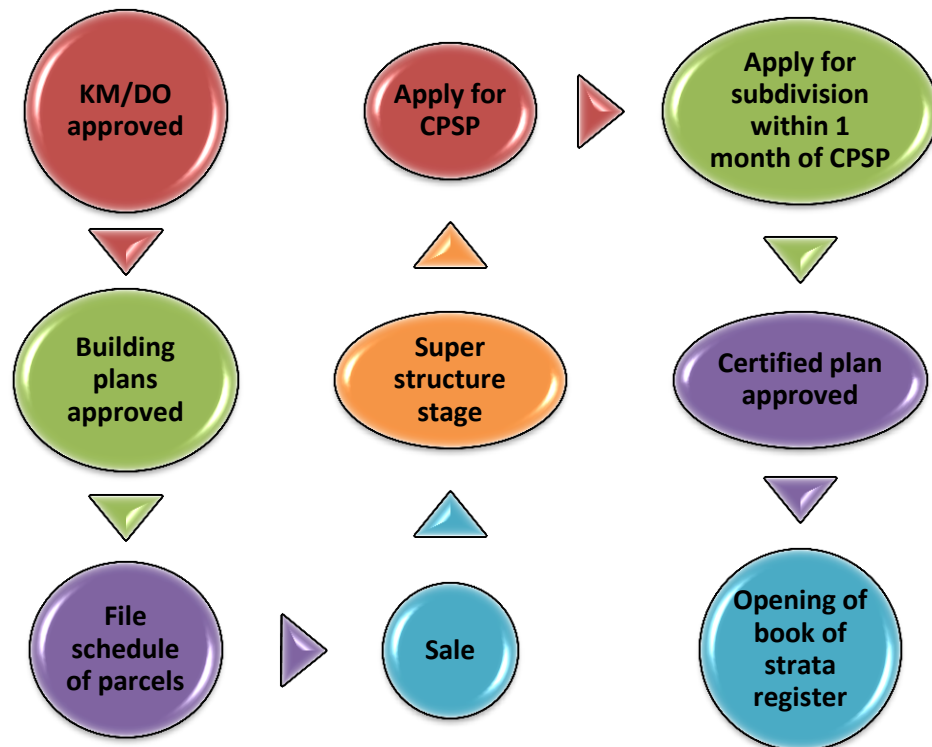
Table 3 – Time period to apply for certificate of proposed strata plan

No.	Event (Commencement here refers to commencement of the amended s. 8 Act 318)	Time period
1	First sale takes place and super structure stage certificate is issued after commencement.	3 months from date of issuance of the document that certifies the super structure stage. ¹⁴
2	Building is completed after commencement and first sale took place before commencement.	3 months from date of CCC.
3	Building is completed and first sale takes place after commencement.	3 months from date of CCC or date of first sale, whichever is later.
4	Building was completed and first sale took place before commencement.	3 months from date of commencement.
5	Building was completed before, and first sale takes place after, commencement.	3 months from date of first sale.

¹⁴ Super structure stage means the stage when building works have been completed as certified in accordance with the by-laws made under the Street, Drainage and Building Act 1974. Administratively, it may mean completion of building works up to completion of walls that are necessary for measurement of parcels, accessory parcels and common property.

- 5.05 One of the documents required to be submitted in an application for a certificate of proposed strata plan is a certified true copy of the schedule of parcels filed with the Commissioner of Buildings under the new Strata Management Act 2013.¹⁵
- 5.06 The time taken for approval of subdivision of a building will be reduced and the new flow chart is shown in Illustration 2.

Illustration 2



- 5.07 No application for subdivision can be made unless the lot of land is held under a final title and is free from any charge or lien.¹⁶
- 5.08 If an application for a certificate of proposed strata plan involves a provisional block or blocks, the proposed strata plan shall contain additional documents or information relating to the provisional block or blocks.¹⁷ A provisional strata title may now be issued for a provisional block comprising land parcels for phase development.¹⁸
- 5.09 However, s. 70 Act 318 which prohibits any dealing of a provisional block remains unchanged.

¹⁵ Section 8A(a)(i) Act 318, as amended.

¹⁶ Section 9(2) Act 318, as amended.

¹⁷ Section 8A(8) Act 318, as amended.

¹⁸ New s. 9A. (Minimum two land parcels in the provisional block).

PART 4**LIMITED COMMON PROPERTY****6. Limited common property and subsidiary management corporation**

6.01 It will now be possible to have a two-tier management corporation – a main management corporation at the first tier and one or more subsidiary management corporations at the second tier.¹⁹ Each subsidiary management corporation will represent the interests of a particular group of parcel proprietors who are entitled to the exclusive benefit of the limited common property. Exclusive benefit includes the exclusive use and enjoyment and the right to contributions and earnings, but excludes any proprietary interest.²⁰

6.02 For example, in a mixed-use development, there can be a residential subsidiary management corporation, an office subsidiary management corporation and a shop subsidiary management corporation –

- The main management corporation will maintain and manage the common property used by all proprietors, like security entrance, driveways and car parks.
- The residential subsidiary management corporation will maintain and manage the swimming pool meant for the exclusive benefit of the residential proprietors.
- The office subsidiary management corporation will maintain and manage the lobby and lifts meant for exclusive benefit of the office proprietors.
- The shop subsidiary management corporation will maintain and manage the central air-conditioning of the shops.

6.03 Limited common property will be suitable for the following types of development –

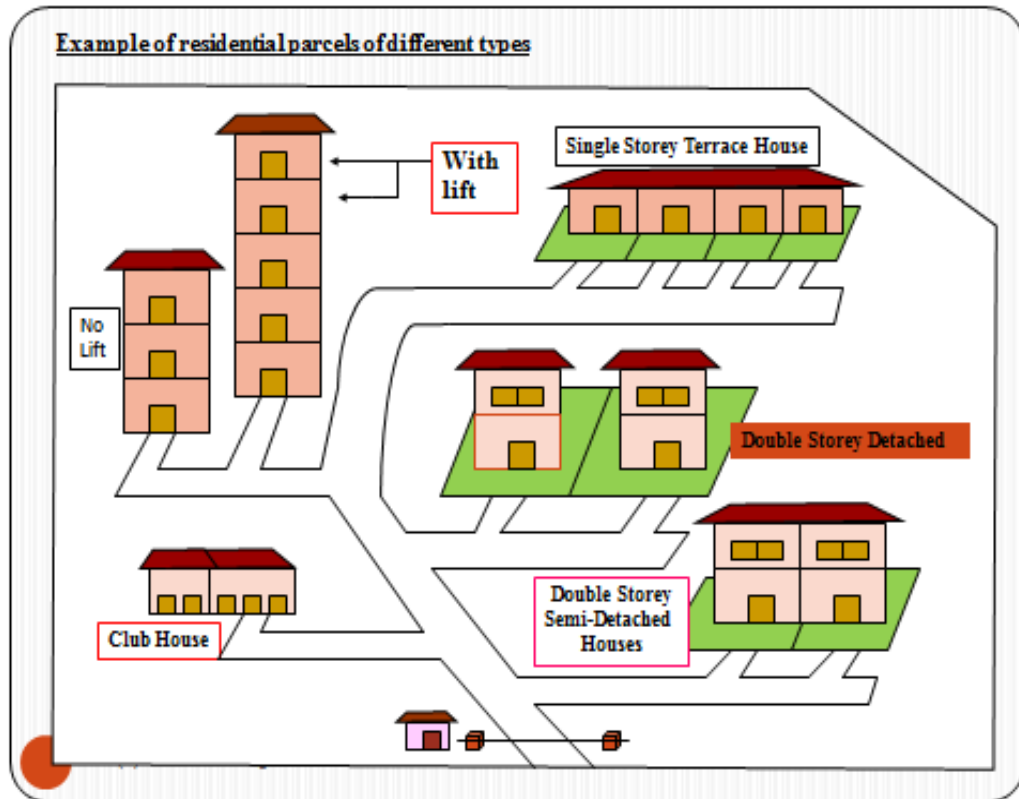
- (a) a mix of residential parcels and non-residential parcels, e.g. apartments and retail shops;
- (b) non-residential parcels used for significantly different purposes, e.g. office and retail shops;
- (c) non-residential parcels used for same purpose but are comprised in a building that is physically detached from other parcels in the development area, e.g. two office blocks;
- (d) different types of residential parcels, e.g. an apartment block with lifts and another block without lifts.

¹⁹ New s. 17A Act 318.

²⁰ Section 2 of Act 757 on definition of “exclusive benefit”.

See Illustration 3.

Illustration 3



6.04 In Illustration 3, it is possible for: -

- The proprietors of the block without lift to designate limited common property and create a subsidiary management corporation;
- The proprietors of the block with lift to designate limited common property and create a second subsidiary management corporation;
- The proprietors of the land parcels (comprising terrace, semi-detached and detached houses) to designate limited common property and create a third subsidiary management corporation; and
- The main management corporation to maintain and manage the club house used by all proprietors.

6.05 The steps required to be taken by a management corporation to designate limited common property and to create one or more subsidiary management corporations are set out in Table 4.

Table 4 – Steps to be taken to designate limited common property

Steps	Actions to be taken	Explanation
1	Management corporation prepare the special plan. ²¹	Special plan to describe, identify or define boundaries or area of the limited common property; to specify each parcel whose proprietors are entitled to the exclusive benefit of the limited common property; & such other details as may be prescribed by Director of Survey.
2	Management corporation to convene a general meeting to pass a comprehensive resolution to approve the special plan. ²²	Comprehensive resolution means a resolution which is considered at a general meeting of which 30 days' notice specifying the resolution has been given; and at the end of 60 days after the general meeting, passed on a poll by proprietors who have at least two-thirds of the aggregate share units of all parcels. ²³
3	Management corporation to make application in Form 9 for approval of Director.	To be accompanied with prescribed fee, copy of comprehensive resolution with a certificate signed by Commissioner of Buildings that resolution has been filed with the Commissioner & the special plan. ²⁴
4	Director refer application to Director of Survey.	Director must state whether special plan is in order. ²⁵
5	If satisfied, the Director will issue certificate that the subsidiary management corporation has been constituted under Act 318.	Limited common property designated and subsidiary management corporation(s) constituted under Act 318.

²¹ Section 17A(2) Act 318.

²² Section 17A(1) Act 318.

²³ Section 2 Act 757 on definition of "comprehensive resolution".

²⁴ Section 17A(3) Act 318, as amended.

²⁵ Section 17A(4) Act 318, as amended.

7. The Singapore experience on limited common property

- 7.01 Much of the provisions in Act A1450 relating to the designation of limited common property and the creation of subsidiary management corporations, are imported from Singapore.
- 7.02 Hence, perhaps before any management corporation in Malaysia jumps into the bandwagon to designate limited common property and form subsidiary management corporations, we should learn a bit more about the limited common property experience in Singapore from a case study on the implementation of the Building Maintenance and Strata Management Act 2004 (Revised 2008) in Singapore, conducted by Dr. Alice Christudason, Associate Professor, Department of Real Estate, National University of Singapore.²⁶
- 7.03 Dr. Christudason found that out of 445 strata developments that came on-stream since the Building Maintenance and Strata Management Act, only eight strata developments have opted for a 2-tier management corporation and the limited common property model, namely:
- Five (5) simple mixed-use residential-cum-shops;
 - One (1) hotel-cum-residential development;
 - One (1) commercial-cum-residential; and
 - One (1) factory-cum-canteen.
- 7.04 She noted that this relatively small number may be due to the difficulty of designing buildings as to clearly define common property for separate blocks and the common property to be shared by all. She was of the view that even if limited common property can be easily delineated on the plans, it is not so straightforward on the ground.
- 7.05 In her paper, she commented that the new 2-tier system could pose several problems, namely:
- (a) Disputes between the main and subsidiary management corporations as well as conflicts between subsidiary management corporations concerning boundaries, common services and limited common property, as ambiguities may arise from delineation, marking or description.
 - (b) Difficulty in finding sufficient volunteers to serve in the councils of the main management corporation and the subsidiary management corporations as more members are required in a 2-tier management corporation.

²⁶ "Legislation affecting common property management in Singapore – Confusion or solution through fragmentation" published in Property Management Vol. 26 No. 3, 2008.

- (c) The 2-tier system may feed the mindset of “I should only pay for what I use” or “why should I pay for what I do not use” and these defeats the key objective of a strata scheme i.e. communal living and shared use of common facilities.
- (d) Differences in by-laws of the main management corporation and subsidiary management corporations and disparities between standards of maintenance.
- (e) Likelihood of generating more differences and conflicts between the council, parcel proprietors and even property managers and this can lead to more litigation.
- (f) Possible operational problems arising from shared services, like security, cleaning, lift maintenance, in particular power and electricity which forms about 50% of the total management costs, as the basis of apportionment would be subjective and an alternative separate contracts or meters fitted would add to costs.
- (g) It is likely that more property managers will have to be employed and this could lead to an increase in the total operational costs to be borne by parcel proprietors.
- (h) Issue of professionalism and competence of property managers.

7.06 She went on to suggest that a better solution may be for:

- (a) each user group to have representation in the management corporation by separate voting among the user groups;
- (b) a single and unified management corporation with representation based on a numerical formula linked to share units and total monetary contribution, which will result in a proper representation of a different mix of users in a unified management corporation;
- (c) a conciliation or arbitration process to adjudicate on users’ disputes, for example a government agency which would charge for the service provided;
- (d) a legislation to deal directly with responsibility for specific common property liability for the maintenance and running expenses of specific common properties and their replacement, for example a legislation to stipulate that in the case of lifts, only proprietors in a high-rise using lifts should bear maintenance and replacement of the lifts, and that such expenses should not be borne by proprietors of walk-up units not served by lifts.

7.07 Whatever may be the case, for the limited common property concept to work in the context of the amended Act 318 and the new Act 757, buildings must be designed to clearly define common property for separate blocks and common property for all. Limited common property must be capable of being easily identified or ascertained on the ground.

8. Will limited common property become popular?

8.01 Although the formula for the computation of allocated share units to be assigned to each parcel, that is found in the First Schedule to the new Act 757, is intended to be used for a development area where no share units have been assigned to each parcel by the developer's licensed surveyors²⁷, it is a common understanding that the same formula shall be used by the Director of Lands and Mines in an application for a "sijil formula unit syer"²⁸ and in an application for subdivision of a building or lands into parcels to be held under separate strata titles²⁹.

8.02 This will mean that in a building intended for subdivision as well as in a subdivided building, different user types will be assigned different share units. A parcel proprietor whose parcel has more weightage factors will be assigned more share units, pay more Charges and contributions to the sinking fund and have more voting rights on a poll. The inequitable obligation to pay for maintenance of the common property or common facilities which are not used by a proprietor may not be so acute as that proprietor is likely to be assigned less share units for his parcel that has less weightage factors.

8.03 Further, paragraph (b) of subsection 60(3) of the new Act 757 now permits a management corporation to determine different rates of Charges to be paid in respect of parcels which are used for significantly different purposes. In a mixed development comprising residential parcels and commercial parcels on one lot of land, the management corporation may now require residential parcel proprietors to pay less Charges than the commercial parcel proprietors.

8.04 In the light of the above different weightage factors and different rates of Charges for significantly different purposes, it remains to be seen whether limited common property will be popular in Malaysia, in particular where there is no element of earnings in respect of the limited common property.

²⁷ S. 8 Act 757.

²⁸ A developer shall be required to apply for a "sijil formula unit syer" (SIFUS) from the Director of Lands and Mines to prepare a schedule of parcels to be filed with the Commissioner of Buildings before he sells any parcel in a building intended to be subdivided.

²⁹ S. 10(1)(h) Act 318, as amended.

PART 5

CONCLUSION

9. Speedier subdivision and exclusive use of limited common property

- 9.01 As can be seen from the few practical issues raised in this paper, purchasers of buildings or land parcels intended to be subdivided can look forward to a speedier issue of strata titles to properties acquired by them.
- 9.02 Proprietors of different usages can look forward to an opportunity to designate and manage limited common property for their exclusive benefit.
- 9.03 This paper is intended to be delivered at a two-hour session in a seminar and hence, did not attempt to explain every detail of the Strata Titles (Amendment) Act 2013. Participants should consider, or seek and obtain independent legal or professional advice on, the provisions of the Strata Titles (Amendment) Act 2013 which are not covered by this paper.

Dated this 18th day of June 2013.