Strata living is fast becoming a way of life in Malaysia, currently about 30% of the country’s population is living in strata-title buildings. The term strata was first introduced to Malaysia in 1967 in response to the mushrooming of multi-storey structures as a result of urbanisation taking place in major cities like Kuala Lumpur, Penang, and Johor Baru.

It is vital to understand the function of the management committees as stipulated in the Strata Act to get a better comprehension of strata living. Beyond the initial management period by the developer upon vacant possession, there are three bodies that a strata owner needs to know: the Joint Management Body (JMB), the Management Corporation (MC) and the Sub-MC.

When the MC and Sub MC are made up of solely strata owners while the JMB involves the joint participation of the developer and owners. Both the JMB and MC have the same function, which is to manage the common properties of a strata development. The JMB is formed within one year from when vacant possession is delivered to the strata owners pending the issuance of strata titles, while the MC is formed upon the issuance of strata titles. The MC comes into effect once the first Annual General Meeting (AGM) is conducted.

To get a better understanding of the Act, we speak to Alastair McCracken, Director, Edgenta TMS Sdn Bhd, a township and community management services company set up for the Iskandar Puteri Sdn Bhd, a township and community management services company set up for the Iskandar Puteri region via joint venture by Medini Iskandar Malaysia Sdn Bhd, UEM Sunrise Berhad and UEM Edgenta Berhad. Under the brand “Communa”, the company uses IoT technology and artificial intelligence to provide solutions of Iskandar Puteri with instant access to smart services, community events and information, online payments as well as a range of lifestyle services and solutions.

What are the benefits of strata living and what are the rights granted to the buyers under the Strata Management Act (1985)?

Malaysia has some of the largest and most complex developments in the world. We have a lot of mixed used developments which blend residential, commercial and retail in one mixed complex. The Strata Law helps these owners, often with different needs and objectives, to live and work cohesively. Strata law is about ensuring all owners are treated with fairness and equity and giving all owners an equal voice in how they shape their community.

What is the role of the JMB in a mixed and large development?

The new Strata Law 757 introduces improved regulation on the handover and transition of a project to joint management of the Developer and owners – the JMB. According to the Strata Management Act 2013 (SMA 2013), the first AGM of the JMB must be convened no later than 12 months from the delivery of vacant possession. The intention of the law is to ensure the developers clearly declare the management arrangements to their community upfront. Developers should ensure that everything from their marketing collateral to their Sales Agreements explain to buyers in detail the intended operation of their community. In the case of mixed use projects, this can be quite complicated, with the introduction of Subsidiary Management Corporations (sub MC) for each parcel or component of the project used and to ensure the interest of all the developer must be transparent, clear and definite.

Are there the powers granted to the MC or Sub MC?

The function of the management bodies is unquestionably to manage the development to maximise the long term value of real estate for all owners within the community. This is more than just delivering maintenance services to its common property. The management bodies collect ‘Service Charges’ and ‘Contributions to Sinking Fund’, to cover the costs of managing the community. The management bodies manage the way in which these funds are spent. The MC can also form Sub MCs to its community. The panels of owners in Malaysia require that they can also make additional by-laws to provide guidelines for owners and visitors that maintain standards, behaviour and access rights within the community.

In many countries, the Strata Law is further developed, and the role and purpose of Sub MC’s are declared early, and formed simultaneously to the formation of the MC. The holistic role of all MC’s and Sub MC’s is to protect the interest of all the owners and to ensure the value of the entire development.

What are the general issues faced in Strata Living?

Separate objectives of ownership is the cause of the greatest conflict in community living in Malaysia. The needs of an owner/investor to maximise his income are often quite different to those of residents who make the community their permanent home. This leads to conflict in the community, at meetings and in the courts. The problems of owners are often incorrectly assume that Malaysian Law is the same as they are used to back home. Malaysia’s Strata Law is quite specific. It codifies and regulates matters that are usually open to interpretation in other jurisdictions. A clear understanding of the Strata Law, its application and intent is needed for communities to succeed.

How do you resolve the issue of collecting service charges?

First and foremost, legal recognition of electronic means as a proper service of notices and introduction of electronic voting platforms as seen in Strata Acts in many countries is necessary to enable foreign owners to participate in their community. The current laws in Malaysia require physical posting of notices on notice boards which poses a lot of challenges in buildings with a majority of foreign owners. Dubai faced similar issues to Iskandar Malaysia where a majority of the buyers were foreigners and they overcome that problem by recognising electronic means of communications as a valid process.

Some say that certain requirements under the current Strata Act may not be practical - do you agree?

I don’t agree. The local Strata Law is very practical. But adaptation to changing needs is key and as I was saying, the recognition of electronic means as a proper service of notices and introduction of electronic voting platforms is just one practical change that could be implemented. The law also allows up to 14 people to sit on the MC. This is interpreted that 14 committee members is best. But in fact, so many members can hinder the process of reaching a decision. In a mature strata environment, the appointed Strata Manager should act on behalf of the committee like a CEO reporting to a board of directors. But certain conditions – an immature property management industry, a severe shortage of management committee members and limited Manager tenure (1 year), hampers the ability to strategically manage mixed or large developments.

Can you elaborate on the rules and a property management tribunal?

The problem we have seen in Malaysia is that committees believe it is wise to hire the cheapest property manager, not the one with the best ability. Property Management is an important and skilled profession. A property that is better managed will naturally fetch a better value. A good property manager with a clear strategy for the community will more than recover his fee through effective cost management, reducing wastage and so on. Owners who spend a bit more in hiring a competent property manager with good hospitality skills, people skills and problem-solving skills, benefit in community quality and value growth.

Iskandar Puteri and very much most of the new development in the state has given growth to Airbnb. However, there seems to be a lot grey area when it comes to the rules. Do you think that the regulations are adequate in terms of the rules and regulations regarding their activities?

AirBnbs here to stay. Hotelsiers accept it. Investors need it and so property owners must learn to work with the reality, not against it. We must respect the right of owners to earn income of their property. The Strata Act By-laws in place are already adequate to control the proper use of units if they are properly applied. There are existing regulations which require the proper registration of AirBnbs tenants just as they must in a hotel. Upon registration, they will be given the house rules. The problems arise when these rules are not followed, and an owner feels he or she has to sneak their tenant into a building and from there, it takes its own course. There have been cases in Iskandar Puteri where management committees have attempted to impose a ban on Airbnb in its building. This will only lead to conflict, argument and a revision to illegal means. As of July 2017, AirBnb has about 18,000 active listings in Malaysia which is a 130% growth in one year, so instead of fighting it, embrace it with regulations, in place and it'll be a win-win situation.

However, there is a key issue which requires regulatory action. Hotel accommodation must meet standards of construction quality, fire safety, and other standards that are not imposed on residential buildings. There are examples of residential buildings being turned into unregulated hotels, as investors seek ways to earn an income. The authorities are very aware of this fact. The safety of visitors and residents in short term letting properties must be ensured. JMC, Committee members and their Property Managers are all responsible to ensure safety and emergency response standards are maintained in their buildings. Property management by Committee members is a key factor in this and it is one reason you don’t want the cheapest property manager but you want the one with professional training and experience.

Do you think the Airbnb operators should pay more for the extra service?

I absolutely do. Our recommendation as a management company is that buildings impose a surcharge to cover the cost of an additional reception or concierge process. If there is a separate residential wing and a serviced apartment wing, the serviced apartment wing must pay more for the services that their guests or tenants exclusively benefit from. Residential owners should not subsidise the additional demands and expense of security, cleaning and other services caused by short term stays, All laws are only validated by the enforcement and its implementation. How do you think the regulation of the law is being enforced?

The Strata Management Act (Act 757) which came into effect in July 1, 2015 introduced the Strata Management Tribunal to handle violations and disputes. The Tribunal has the jurisdiction to hear and determine any claims specified in Part 1 of the Fourth Schedule and where the total amount in respect of which an award of the Tribunal is sought does not exceed RM250, 000.

When owners don’t understand their rights and think that the solution to their problems will be to do it in the press or via social media, what role should the owner play in the resolution of the law?

If owners are approaching the press with their issues, they are acting directly against their own interests, their neighbours, and even the developer as they can cause a direct negative effect on perceived property value. I’ve seen cases overseas where owners have taken legal action against Committee members and other owners whose actions have caused commercial detriment to property values. It’s a no-win situation to publicly air grievances. You don’t need to take these measures if you understand your rights and if you have a good property manager who can help to resolve issues amicably.

Understanding Strata Living and Quality of Management

Alastair McCracken