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PERFECTION OF TITLE : THE FASTER THE BETTER

----- Authored by the Conveyancing Team of Miranda & Samuel -----

Perfecting the transfer of title is a crucial step in real estate transactions because it **ensures legal clarity and certainty** regarding property ownership. The process of perfecting title involves taking the necessary steps to establish and record a clean and unambiguous chain of ownership.

What is an individual title?

The individual title is title issued for landed properties such as terrace houses and bungalows to prove that the property owners are the sole owners of the entire piece of land. Whereas strata title is a form of property title that is issued for properties in a multi-story, high-rise building, or houses (i.e. stratified properties) that are subdivided into different smaller parcels. In other words, a strata title is separate individual title issued to each and every unit of houses, apartments or offices within a land belonging to the owners of the property (i.e. the housing developers).

Before the issuance of the separate title, the property will fall under the **housing developer's master title** which is a larger piece of land that consists of the rights of ownership for the developer. Nonetheless, once the separate title is issued, the housing developer will inform the property owner to take the necessary steps to complete the memorandum of transfer of Form 14A of the National Land Code ("NLC"). It is a legal document used to effect the transfer of the property from the housing developer to the property owner. The title is considered perfect, once the registered proprietor of the property changes from the developer's name to the current owner's name.

What happens if one has failed to perfect the transfer of title?

When the separate title has been issued by the housing developer, it is important to **perfect the title** as soon as possible as failure to do so may result in serious issues such as:

1. **Additional delay** in the sale and purchase transaction of the property.

It would be complicated if one wants to sell his property as the strata title will show that the housing developer is the registered owner of the property. The property owner is then required to obtain consent from the developer to provide a '**direct transfer**' to transfer the title of the property directly to the newly intended purchaser during the sale.

However, if the property is a leasehold title, a state authority consent will be required for the transfer and the title will first need to transfer from the developer to the owner and thereafter from the owner to the new-intended purchaser (i.e. 'double transfer'). This would lead to a **lengthy procedure** for the sale transaction and eventually a longer time for the completion of the sale and the delay will lead to longer completion times for the sale and delay in receiving the sale proceeds.

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2. Difficult for the beneficiary to obtain a legal interest in the inherited property.

If the property owner passes away without perfecting the transfer of strata title, the beneficiary will not be able to dispose of the property immediately after the grant of probate or letters of administration. This is due to fact that the property needs to be **first transferred from the housing developer to the executor/administrator** and then from the executor/administrator to the beneficiary.

3. Difficult for the potential purchaser to obtain a loan.

A potential purchaser may face difficulties in getting a loan to finance the purchase of the property as most financial institutions and banks are often reluctant to grant loans for properties where strata titles have yet to be perfected.

4. Housing developer wound up or liquidated

In a situation where the developer is wound up or liquidated before the perfection of the transfer of title, the property owner is required to deal with the appointed **liquidator or the receiver** of the property to perfect the transfer and charge. Also, the owner may need to pay additional fees and costs to the liquidator for the perfection of the transfer process.

5. Additional storage charges imposed by the housing developer.

Some developers may impose additional storage charges on the owner for the failure to perfect the transfer of the strata title within the stipulated period.

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6. Delay in forming the Management Corporation/Delay owner's right in the Management Corporation.

It should be noted that for the Management Corporation to be formed, there must be a **minimum of 25%** of the aggregate share units that have perfected their strata titles. Nonetheless, even if the Management Corporation has been formed, owners who have not perfected their strata titles are not allowed to participate in the Management Corporation. Their rights to attend or vote at general meetings or volunteer as committee members are being restrained.

7. Uncollected titles can be **misused by unscrupulous individuals** who might take advantage of the owner by dealing with the property without the actual owner's knowledge or permission.

How to perfect the title?

When the individual/strata title has been issued, the property owner will be informed by the housing developer through a written notice. The developer should contact the owner to execute the necessary documents such as the **Memorandum of Transfer ("MOT")** and the **Memorandum of Charge ("MOC")** for the owner who took a loan to finance the purchase of the property. The owner can either choose to appoint the developer's panel lawyers or other lawyers to represent him for the perfection of transfer and charge. This perfection of transfer process may cost a percentage of the property's purchase price because this includes the legal fees, bank charges and stamp duty payable.

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Why is it important for the property owner to perfect the title?

Until and unless your name is registered on the title of your property, your title will not be entitled to **full protection under the law** which is known as indefeasibility title. Your title may be defeasible by way of **fraud or forgery** as before the individual/strata title is issued, you are **only the beneficial owner** even though you have paid all the purchase price. The housing developer still holds the legal ownership of your property and failure to perfect the transfer of title will result in serious issues as mentioned above.

It is also important for housing developer

Upon the construction of the superstructure, i.e. the frame, walls and floors, has been completed, the housing developers should apply for strata title for the purchasers within one month of the issuance of Certificate of Proposed Strata Plan ("CPSP"). Under the Strata Titles Act 2013, the developer must apply for a CPSP from the Department of Survey and Mapping Malaysia (JUPEM)'s Director of Survey. Although the developers can apply for an extension of one month from the Director, any subsequent failure to comply with the extended period may render the developers guilty of an offence under s.20(9) of the Strata Titles Act 2013.

Also, according to the Strata Titles Act 2013, the housing developers should issue strata titles to the purchasers upon vacant possession of the property. An exemption of time may be given by the Controller of Housing to the developers if they are unable to transfer the strata title for reasons out of its control, however, the developers would still need to transfer the strata titles to the purchasers within the stipulated period determined by the Controller of Housing.

This article is for general information purposes only and does not constitute legal or professional advice. It should not be used as a substitute for legal advice relating to your particular circumstances. Please note that the law may have changed since the date of this article.

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