



Remember, lives and properties worth millions of ringgit are being entrusted to property managers to care, control and manage.

KPKT Proposed 'Licensing of Strata Property Managers' – ill Conceived

THE National House Buyers Association (HBA) gives its take on the current debate in Parliament on the Bill to amend the Act 242 to be renamed as "Valuers, Appraisers, Estate Agents and Property Managers" – primarily to give clarity that the legislation covers aspects of 'property managers' and

its proposed Register of Property Managers amongst other issues.

We have penned Part 1 titled "The proposed Register of Property Managers in Act 242" that was published in the Real Spaces issue of 11.8.2017; and Part 2 titled "Exposing the real motive to reinvent the

wheel" that was published in the Real Spaces issue of 18.8.2017. Readers could surf the internet for the past articles.

A separate Board or proposed Licensing of Strata Property Managers?

There is now a call by the Housing

Minister to have a separate Board or some form of 'Licensing of Strata Property Managers' process to be regulated by the Commissioners of Buildings (COBs) notwithstanding the fact that our country

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has already the Board of Valuers, Appraisers and Estate Agents (BOVAEA) that was formulated under Act 242 since 1981. The practice of professional property managers has always been regulated by the said statutory Board for the last 36 years.

In the public's interest, HBA will strenuously object to any proposal by Ministry of Urban Wellbeing, Housing and Local Government (KPKT) to carry out licensing of professional property managers under the COBs as it is grossly inappropriate to do so and furthermore it is localised in each State except Sabah and Sarawak that do not have COBs. In addition, HBA will object to any proposal purportedly under the guise of the Strata Management Act, 2013 (Act 757) to set up another Board or the proposed Licensing of Strata Property Managers under KPKT as there is no necessity to reinvent the wheel and inevitably increases unnecessary costs to the government which is currently facing financial constraints.

Ill Conceived Idea

The intention and objective of KPKT to license existing unregulated non-registered strata managers in order to control and regulate them is an ill conceived proposal based on the following valid reasons:-

- **Ineffective due to the absence of centralized control** of strata property managers for the whole country. Placing the regulatory control through licensing by the COB of each local authority is akin to setting up a large number of regulatory boards or 'licensing centres' equivalent to the number of local authorities in the country. The matter is further compounded by the fact that Act 757 does not apply to East Malaysia (Sabah and Sarawak), thereby there are no COBs to implement such licensing in Sabah and Sarawak.

In the Act 242 amendment bill, the proposed moratorium period (window opening) of twelve (12) months in the register of property managers to include the registration of the existing non-registered property managers throughout the country will be sufficient for the existing regulatory board, which will be renamed as the Board of Valuers, Appraisers and Estate Agent and Property Managers (BOVAEAPM), to continue maintaining its centralized sole regulatory control of all property managers throughout the country (including East Malaysia) for all strata properties and non-strata properties.

- **Ineffective due to the absence of a disciplinary committee** of qualified peers to conduct investigation and hearing of misconduct by a registrant and to carry out disciplinary action against a registrant. There is only

one (1) COB in each local authority and the same person will be the one-man disciplinary committee in such cases. Justice will be thrown down the drain if there is a conflict of interest or strong personality difference or biasness by the COB. Hence, it will inadvertently give rise to abuse and corruption in the system.

This issue does not arise in the above mentioned BOVAEAPM where the disciplinary committee are a committee of between three to five qualified peers. The findings and recommendation of the disciplinary committee will be submitted to the full Board for its decision and execution. Thus, the system in itself embodies transparency and justice.

- **Ineffective due to the absence of a comprehensive disciplinary action** applicable throughout the country against a registrant who has committed a serious misconduct in a local authority area. Hence, the miscreant can still carry on management of strata properties in other local authority areas or in other states. There is this clear incident of an 'unregistered so-called property manager' operating in Selangor that was banned by the Selangor Housing Board but later was found operating in Perak. He created havoc and indulged in all sorts of wrong doings and still is continuing his modus operandi under several guise.

This issue does not arise in the above mentioned BOVAEAPM where the disciplinary action meted out to a miscreant will cover the whole country (including East Malaysia).

- **Other professions:** Accountants and auditors who are involved in the keeping, maintenance and auditing of the accounts of strata properties are not being subject to licensing by the COBs. Similarly, the engineers and lawyers involved with strata properties are not being subject to licensing by the COBs. These professionals are controlled, licensed and regulated by their own peers in their respective regulatory boards, i.e. lawyers with the Bar Council, Malaysia. Hence, by the same token, such licensing by COBs is not required for the registered property managers because they are controlled, licensed and regulated by the above mentioned BOVAEAPM.

- **Validity of License:** From what we understand from KPKT, the proposed 'licence' will be valid for a period of at least 2 years for ease of convenience to the COBs and the applicants on the premises that COBs can revoke such licence at any

time during the period. This biennial renewal of licence instead of annual renewal of licence does not augur well if one wants proper regulatory control of a professional property manager.

This issue does not arise in the above mentioned BOVAEAPM where the annual renewal of the licence to practice property management is mandatory under the Act 242 and covers the whole country (including East Malaysia). Safeguard like professional indemnity insurance coverage is made mandatory when a professional property manager wants to seek renewal of his 'practising license'.

- **Licensing per se:** In fact, KPKT's proposal of licensing is not only ill conceived but it will reduce the professional registered property managers to the same level of a business license for a hawker where hawking licence is issued to each hawker by a local authority. The issue of dignity arises.

- **COBs distracted from core work:** Currently, all the COBs are already heavily overburdened with the daily administration and enforcement of the Strata Management Act, 2013 and regulations, and the daily mediations of the never-ending disputes arising from the strata properties within their own local authority areas. Therefore, it is inconceivable that the COBs are able to handle this onerous and demanding additional task of licensing and regulating the strata managers.

The overburdened COBs have been unable to supervise, check and enforce the mandatory bond of RM50,000 or a sum equivalent to 12 months' fees, whichever is the higher, that is required to be deposited by an unregulated non-registered property manager with the JMB/MC under the Strata Management Rules 2015 since its implementation date on 1.06.2015. HBA is concern that owners' interests have been put at risk when all the unregulated non-registered property managers are managing stratified development areas in full breach of the mandatory bond that is intended to protect the owners' interests. Now, do you think it is good idea to propose licensing of strata managers under the overburdened COBs when they cannot even enforce the said mandatory bond.

- **Ultra vires SMA:** We would like to point out that the Strata Management Act 2013 does not have laws on regulatory control over the property managers save and except the developer, the JMB, the MC and the Subsidiary MC. The proposed

setting up of licensing centres (for unlicensed) property managers is beyond the scope and power of the Minister and he may be exercising in excess of his legal perimeters and authority.

Hence, in order to safeguard the public interest, it is timely for Parliament to approve the Bill for the Register of Property Managers under the Act 242 for such regulatory control of all persons and companies that profess to carry out professional property management practice in the country.

In order for the country to grow and progress to be on par with other developed countries, the government must make efforts to enhance and improve the existing professionals in the country, and not to impede their progress and growth.

Why Regulate?

The answer is simple: Because lives and properties worth millions of ringgit are being entrusted to property managers to care, control and manage. Those not registered but have the experience and know-how should make it an effort to make enquiries with a view towards registration under the statutory Register of Property Managers. They should not fight the very system that works towards safeguarding the interest of the public. It is the duty of The Board to ensure that the public is protected from unscrupulous and illegal property managers.

NOTE: The Bill to amend the Act 242 to be renamed as "Valuers, Appraisers, Estate Agents and Property Managers and all its proposals have been passed by the upper house of the Parliament ie Senate (Dewan Negara) on 21.8.2017.



Know your rights:
NATIONAL HOUSE BUYERS ASSOCIATION (HBA)
No. 31, Level 3, Jalan Barat, Off Jalan Imbi, 55100, Kuala Lumpur
Tel: 03-2142 2225 / 012- 334 5676
Fax: 03-22601803
Email: info@hba.org.my
Web Site: www.hba.org.my