

BY THE NATIONAL HOUSE BUYERS ASSOCIATION

THE National House Buyers Association (HBA) expresses great relief that, after more than 20 years, sensibility has finally prevailed when our Parliament had on 21.8.2017 approved the amendment bill to rename the Act 242 as the Valuers, Appraisers, Estate Agents and Property Managers Act 1981 ("VAEAPM Act") together with the opening of the Register of Property Managers.

The Act 242 also included a new Section 30A that allows police investigation, under provisions of the Criminal Procedure Code (Act 593), into commission of any offence under the Act with the primarily objectives to safeguard and protect the interest of the homebuyers and investors of strata properties and non-strata properties against unscrupulous property managers and estate agents who have mismanaged and misappropriated monies.

Loophole in SMA & SMR

Be that it may, HBA continues to be concerned on the gaping loophole where damage through malpractice with impunity by unregulated non-registered property manager can still take place under the Strata Management (Maintenance and Management) Regulations 2015 ("SMR") without any regards to VAEAPM Act. Rightly, there is no regulatory control of property management practice in the Strata Management Act 2013 ("SMA") as it is only a legislation to regulate the developer, the Joint Management Body ("JMB") and the Management Corporation ("MC") in the management and maintenance of the common property in a strata development area. To add salt to the wound, these unregulated non-registered property managers under SMR can be any Tom, Dick and Harry without any proper or relevant qualifications as long as they are able to lodge a bond of RM50,000 or a sum equivalent to 12 months' management fees, whichever is the higher, with the JMB or MC, as the case may be. This bond is mandatory under SMR because the unregulated non-registered property managers do not have professional indemnity insurance cover. Since the implementation of SMR on 2.6.2015, all the unregulated non-registered property managers have been carrying out their property management of strata properties in blatant breach of SMR without even lodging the mandatory bond with the JMB or MC that will at least protect the homebuyers and investors in the event of mismanagement or misappropriation of monies. To compound the situation, the overburdened Commissioner of Buildings in each local authority area is not able to check and enforce the mandatory bond due to heavy daily workloads and lack of manpower.

Differing Views

This situation arises because the Attorney General's Chambers ("AGC") has taken the view that the unregulated non-registered property managers can still operate under Regulations 21 and 32 of SMR on the ground that the SMA and the VAEAPM Act are separate legislations. HBA totally disagrees with the said view because the SMR is only a subsidiary legislation to the SMA which is the principal Act; and the SMA clearly does not have any provision in law for unregulated non-registered property managers to manage and maintain strata properties. Hence, the Regulations 21 and 32 of SMR are ultra vires the principal Acts of SMA and VAEAPM Act. The unregulated non-registered property managers operating under the Regulations 21 and 32 of SMR is



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Sensibility has finally prevailed

obviously a dilemma that needs to be resolved.

Excerpts from Parliament Hansards

The solution to remedy the dilemma has already been clearly laid out in the Parliament Hansards as shown below:-

DR 26.11.2012, page 81

Menteri Perumahan dan Kerajaan Tempatan [Datuk Seri Chor Chee Heung]: Saya hendak memastikan bawah buat masa ini we maintain status quo, balik kepada 2007 akta itu (Building And common Property Act 2007 or Act 663) yang tidak sebut (registered property manager). Selepas itu kita tengok next year kalau kewangan (Ministry of Finance) kata okey, board (Board of Valuers, Appraisers and Estate Agents) boleh buka (open the Register of Property Managers) kita buat pindaan (amendment to restore registered property manager back into SMA) pula to cater for that.

DN 19.12.2012, page 87

Menteri Perumahan dan Kerajaan Tempatan [Datuk Seri Chor Chee Heung]: Katalah esok kita sudah selesai dengan kewangan (Ministry of Finance) dari segi pendaftaran (the Register of Property Managers). Semua sudah dapat satu pendekatan yang sudah okey sudah. Selepas itu kita buat pula pindaan (amendment to restore registered property manager back into SMA). Itu bukan masaalah yang besar.

When the SMA and its regulations were debated in Parliament on 26.11.2012 and 19.12.2012, the then Minister of Housing and Local Government, Datuk Seri Chor Chee Heung, gave a ministerial decree to Parliament that the government would restore the "registered property manager" back into the SMA when the Ministry of Finance has amended the Act 242 to open the Register of Property Managers.

DR 7.8.2017, page 85

Timbalan Menteri Kewangan [Dato' Wira Othman bin Aziz]: Kita memang ada sebut berkaitan dengan percanggahan tadi Akta 757 (SMA) dengan akta ini (VAEAPM Act) dan saya rasa memang kita akan cadangkan kepada kerajaan melihat semula Akta 757 (SMA) itu untuk kita pinda (amendment to restore registered property manager back into SMA). Kita pun rasa tidak bolehlah satu akta kata kalau tidak mahu daftar kena bayar bon, yang ni wajib daftar. Jadi saya

rasa elok, sesuai semua kena daftar jadi senang. Terima Kasih.

The present Deputy Minister of Finance, Dato' Wira Othman bin Aziz, recommended that the government should now review the SMA for amendment to restore the 'registered property manager' back into the SMA in conjunction with the VAEAPM Act and its Register of Property Managers being passed by Parliament.

Loophole in SMA & SMR to be plugged with the following reinstatement of the original proviso

In order to plug the gaping loophole in the protection of the homebuyers and investors in strata properties, HBA now calls upon the government to fulfil and make good its decree to reinstate the original proviso for 'registered property manager' back into Section 21(2)(f) and Section 59(2)(f) of SMA as shown in underlined italics below and together with the procedural removal of the non-registered property manager in the Regulations 21 and 32 of SMR:-

Section 21(2)(f), SMA

The JMB has the power to employ or arrange and secure the services of any person or agent to undertake the maintenance and management of the common property of the building or lands intended for subdivision into parcels provided that, if such person or agent is an independent third party, he shall be a registered property manager.

Section 59(2)(f), SMA

The MC has the power to employ or arrange and secure the services of any person or agent to undertake the maintenance and management of the common property of the building or lands intended for subdivision into parcels provided that if such person or agent is an independent third party, he shall be a registered property manager.

HBA vehemently objects to any attempt by the current Housing Ministry to subvert or undermine the newly amended VAEAPM Act through its ill-conceived proposal for the 'licensing of strata property managers' as such proposal will inadvertently lead to chaos due to the absence of a centralized regulatory board and further compounded by a one-man COB board in each local authority area.

HBA reiterates our stand against the idea of the Housing Ministry reinventing another regulatory board of strata property managers as it will eat into the coffers of the country which is already suffering from financial constraints. For more details, readers can refer to HBA's 1st article titled "The proposed Register of Property Managers in Act 242" in the Malay Mail newspaper dated 11.8.2017; HBA's 2nd article titled "Exposing the real motive to reinvent the wheel" in the Malay Mail dated 18.8.2017; and HBA's 3rd article titled "KPKT Proposed 'Licensing of Strata Property Managers' - ill Conceived" in the Malay Mail dated 25.8.2017.

Making it Legal - Harness new source of manpower

HBA understands from the National Property Information Centre ("NAPIC") that there are currently 17,625 strata development areas where some of them are either self-managed or managed by property managers. The issue of registered property manager manpower will be resolved through the VAEAPM Act - first 12-months moratorium window opening period that allows all the existing 1,100 registered property managers and also all the non-registered property managers with sufficient experience and competency to be registered in the new Register of Property Managers. This will bring such existing non-registered property managers into the fold where they can be regulated by the regulatory Board ("Board") under the VAEAPM Act to abide by the Malaysian Property Management Standards, the Code of Conduct and the Rules of the VAEAPM Act; and be covered with mandatory professional indemnity insurance to protect the homebuyers and investors.

HBA urge all the existing non-registered property managers, who have provided satisfactory services to their clients over the years and have the technical 'know-how' and experience, to make enquiries with the Board for registration as registered property managers in the new Register of Property Managers. As registered property managers, they will immediately improve their professional status, continuously upgrade themselves through continuous professional development ("CPD") programmes under the auspices of the Board, abide by the Malaysian Property Management Standards,

professional Code of Conduct, Rules of the VAEAPM Act and disciplinary process of the Board under the VAEAPM Act. At the same time, they can be covered by professional indemnity insurance. This augurs well for the homebuyers and investors as they can be assured of the professional services by the registered property managers under the VAEAPM Act; and, at the same time, these homebuyers and investors have recourse to the Board in the event of any dispute in the services provided by the regulated registered property managers.

Furthermore, the VAEAPM Act will also have a new Register of Probationers for aspiring property managers from persons who have recognized or accredited qualifications as determined by the Board; and, during the first 12-months moratorium window opening period, from estate agents with at least 10 years' experience as estate agent. The probationary property managers will become registered property managers after undergoing 2 years internship training and passing a test of professional competency ("TPC") by the Board. This will provide a continuous stream of competent registered property managers to the industry, thereby benefitting the country. Opportunity is now open to the 8,000 property management/ estate management graduates, 1,400 building surveying graduates, and over 600 new graduates annually from the local universities of UTM, UiTM, UM and UTHM in the faculties of property management, estate management and building surveying.

Stop the bickering - Let's move on with business

From the grapevine, HBA heard that some lobbyists/lobby groups, who were against registration (with the Board), have now agreed to yield and are now inclined to support the VAEAPM Act that will enable their members, the majority of whom are the existing non-registered property managers, to become professional registered property managers during the 12-months moratorium window opening period under the VAEAPM Act and, at the same time, benefit from the professional indemnity insurance cover and able to manage strata properties without the need to lodge a security bond with the JMB/MC; and immediately gain public assurance and respect for their services; and, most importantly, their own self-dignity and professional standing. The prospect of them becoming responsible citizen is very high.

VAEAPM Act marks a significant turning point in the both the protection of the homebuyers and investors of strata properties and the expectation of a high level of professional services by registered property managers. As there seems to be an acute shortage of fully trained manpower for property management staff in the industry, HBA hopes that the Board and its related professional trade associations/societies will quickly come out with suitable training modules that are relevant to provision of high standards of deliverables expected of a professional registered property manager. Ideally, the training modules for property management staff should be specific and focused on the job in hand, and can grouped into broad groups such as building services management, building facilities management, financial management, meetings management, insurance and claims management, tenancy and lease management, application of property laws and amongst others. Institute Penilaian Negara ("INSPEN"), University of Malaya and other institutions of higher learning can be tapped to produce such accredited on the job programmes for the betterment for our country.