

New Strata Law to Impact Dubai

By Gary Bugden*

Release of the regulations implementing Dubai's Jointly Owned Property Law ("Strata Law") is imminent and a new era in property ownership in the Emirate is about to unfold.

The Strata Law commenced on 31 March 2008 and following consultation with property stakeholders, the Dubai Land Department has put the final touches to the implementing regulations. When promulgated the regulations will complete a package of laws comprising –

- Law No 27 of 2007 Concerning the Ownership of Jointly Owned Properties
- Owners Association Constitution
- General Regulation Concerning Jointly Owned Properties
- Regulation Concerning Jointly Owned Property Declarations
- Regulation Concerning Preparation of Survey Plans.

Genesis of the law

The Dubai Strata Law is broadly based on the Australian strata titles system which has been introduced in one form or another in numerous countries around the world. The Australian system has stood the test of time, being first introduced in New South Wales in 1961. The same system is in the process of being introduced in Abu Dhabi and is currently under consideration for a number of other countries in the Region.

The version of strata titles being introduced in Dubai is nowhere near as complex and prescriptive as its Australian counterpart. This was a deliberate outcome to ensure that the new law accommodates the scale and complexity of Dubai projects and encourages the innovative and cutting edge development that has made Dubai famous the world over.

Application of the law

While in theory the Strata Law could be used by a master developer to apply an Owners Association over the whole of a master community, this is not the intention. The core infrastructure associated with a master community will continue to be the responsibility of the master developer or any public authority, such as the RTA or DEWA, which is entitled to take it over.

The Strata Law will have to be applied at neighbourhood, building and sub-building level within a master community. This means that its impact will be felt by master developers and sub-developers who are developing projects at that level. Although not essential, the Strata Law will

be able to be applied at precinct level as well. It will therefore be a useful mechanism for use in larger projects where commercial and residential components need to be separated.

Perhaps most significantly, the law will apply to completed developments right across Dubai. Any completed project that contains jointly owned property (which is property that is jointly **used** rather than jointly **owned**) will need to be brought under the law by the developer of that project. These will include apartment buildings, villas and townhouses within master planned communities. This requirement has the potential to impact on many tens of thousands of completed apartments and villas across the Emirate.

Applying the law to completed developments has advantages for villa and apartment owners, including:

- Issue of a Government certified title to each property
- Formation of an Owners Association to ensure owners have control of their development
- A possible opportunity for review of any long term maintenance and service arrangements that may have been put in place by the developer without the knowledge or consent of purchasers.

Mechanisms introduced

Key objectives of the Strata Law are to facilitate development and preserve the standards of completed projects by ensuring that they are properly maintained. A number of important development mechanisms are introduced by the law for these purposes, including –

- Strata titles
- Community titles
- Volumetric titles
- Staged development
- Tiered Owners Associations

These mechanisms ensure that Dubai is equipped with the latest and best available means to structure the title, governance and management arrangements for large and complex projects, whether they are master planned communities or mixed use buildings.

Strata titles involve the vertical subdivision of a building into “Units” and “Common Areas”. The subdivision is done with reference to the floors, walls and ceilings of the building. Responsibility

for the Common Areas is vested in an Owners Association that is made up of the owners of all the Units. Common Areas comprise everything that is not part of the Units and often include such things as the building foyer, elevators, fire stairs, passageways, recreational facilities, roof and the surrounding land and gardens.

Community titles are based on the same principles as strata titles except that they involve the subdivision of land on a horizontal plane (as opposed to vertically) into “Units” (i.e. plots) and “Common Areas”. The subdivision is carried out using conventional survey means with reference to the underlying cadastre. Common Areas comprise everything that is not part of the Units and often include such things as roads, parks, walking trails, lakes, fountains and bridges. The Common Areas are administered by an Owners Association in exactly the same way as occurs with strata titles.

A building on a community titles “Unit” (e.g. a residential apartment building) can, in turn, be strata subdivided. The Owners Association constituted for the strata subdivision is treated as the owner of the underlying Unit (or plot) and becomes the member of the community titles Owners Association. This effectively creates a second tier (or level) of Owners Associations. This is what is meant by **Tiered Owners Associations** and the law allows up to 3 tiers of Owners Associations within a project, without any limit on the number of Associations on the second and third tiers.

Volumetric titles are used to subdivide a building 3 dimensionally into plots or lots, each of which usually comprises a particular component use area within the building. For example, in the case of a building housing a shopping centre, hotel, office tower and apartment tower, a volumetric subdivision would be used to define 4 plots, each comprising one of those component use areas. However, there would not be any Common Areas or any Owners Association involved with the subdivision. Instead, a contractual document called a “Building Management Statement” would be registered at the Land Department with the volumetric subdivision plan. This Building Management Statement would regulate such things as insurance of the whole building, reciprocal use rights over “Common Elements” (i.e. equipment, services and facilities shared by 2 or more of the plots), maintenance of the Common Elements and resolution of disputes.

In turn, particular plots within a volumetric subdivision (e.g. the apartment tower) can be strata subdivided so that the individual apartments can be titled and sold separately. This has the benefit of confining the residential owners to the governance and management of the residential plot, with limited involvement of the residential Owners Association in the administration of the Common Elements. In mature real estate jurisdictions this approach to subdivision of mixed use buildings tends to preserve the value of the commercial components

by substantially separating them from the residential components. This has advantages for both the commercial owners and the residential owners.

Staged development is a common way of progressively releasing product to the market and staging the delivery of the product. In this way some of the profits on an early stage can be used to partly fund the construction of later stages. The Law allows developers to set up a scheme of staged development in the Jointly Owned Property Declaration. Where this is done the developer is able to progress the development without interference by any Owners Association or other existing Unit owners.

The Owners Association

The Owners Association, which is a separate corporate entity, has a governing body called a “Board” and an executive officer called a “General Manager”. The Board is elected by the Unit owners at an annual general assembly and the Board appoints the General Manager and delegates powers and functions to the General Manager.

The Owners Association is regulated by a Constitution promulgated by the Land Department and a “Jointly Owned Property Declaration” prepared and filed by the developer. Its members (i.e. the Unit owners) have an entitlement or shareholding that is specified in that Declaration. This entitlement determines the voting power of the Unit owner as well as the owner’s share of the service charges which the Owners Association is empowered to impose and recover.

The service charges are determined at the annual general assembly upon the recommendation of the Board. The General Manager is then responsible for billing and recovery of the service charges. Any community service charges imposed by a master developer will either be imposed directly upon the apartment or villa owners or imposed on the various Owners Associations within the master community. If imposed on an Owners Association the community service charge will be taken up as an expense item in the Owners Association's budget and will eventually be reflected in the service charge imposed by the Owners Association.

The channeling of community service charges through an Owners Association has a number of advantages for master developers, including:

- One bill per Owners Association instead of separate bills to hundreds or thousands of individual owners
- Ease of recovery (an Owners Association being legally compelled to pay its debts and being well equipped to recover unpaid service charges from Unit owners)
- Simplified banking and accounting (because of the smaller number of bills involved).

Title certification

The Strata Law, along with other laws recently introduced by the Government under the advice of the Land Department, combine to deliver what is effectively a Government backed certification of land ownership in the form of a title document. This replaces the old system under which a purchaser was dependant on the master developer for certification of ownership. Upon registration of a transfer of a Unit at the Land Department the Unit owner will receive a title document as evidence of ownership. To reinforce this new system developers are no longer legally able to record and certify ownership.

Off-the-plan contracts are also required to be registered at the Land Department under this new titling regime. This ensures not only that there is a public record of the contract and that the purchaser is protected, but also provides safety for purchasers of properties under “on-sale” transactions (i.e. where a purchaser on-sells the uncompleted property to another party for a premium).

This Government sponsored title certification is an important part of ensuring that land ownership in Dubai meets world best practice. This is critical to the international reputation of Dubai’s real estate market.

Consumer protection

In exchange for these modern development mechanisms and relative freedom to use them, developers will be required to pay a “price”. This price takes the form of new consumer protection mechanisms that will force developers to do more front-end work structuring their projects and provide more information to purchasers of off-the-plan products. While this has potentially far reaching consequences for developers, it does set the scene for a more transparent and reliable real estate market in Dubai. This comes at a time when the reputation of the Dubai market needs such positive stimulus.

Next month’s article will detail the price to be paid by developers and the benefit they will gain in the medium to longer term by the underpinning of the integrity of Dubai’s real estate market by its new jointly owned property and associated laws.

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