

MALAYSIA STRATA TITLE GOVERNANCE: AN OVERVIEW LEGISLATIVE CREATION OF SPECIAL BUILDING IN MALAYSIA

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ABSTRACT

Strata Titles was first introduced into Peninsular Malaysia in National Land Code 1965 (Act 56) (NLC 1965) as subsidiary titles. Strata Titles Act 1985 (Act 318) (STA 1985) has been established with the increasing of multi-stories mixed development. Strata Titles is a document of title which endorsed by the land administrator for the whole parcels of a subdivided multi-unit of the building. Strata Titles Act 1985 has experienced some modifications and amendments to meet the current development and socio-economic demands in stratified development. Despite of its amendments and modifications, one of the most important current discussions in stratified development for old-stratified scheme is the absence of strata title due to the non-issuance and transference of strata title to parcel owner (or purchaser) of old-stratified scheme. Thus, Strata Titles (Amendment) Act (STAA) 2007 has been amended following by Strata Titles (Amendment) Act (STAA) 2016 to constitute 'special building' for strata title application of old-stratified scheme. However, it highlights there is no standard of rules and guidelines of strata title application for special building that can be implemented for all states throughout Peninsular Malaysia includes Federal Territory of Labuan as there is non-significant increasing in number of applications of strata title for special building as certain States do not show any improvement in application number since special building been introduced. The purpose of this paper is to present an overview background of legal contexts of strata title application for special building. The research method used is the qualitative research in which it will rely on the analysis of the relevant statutes, rules, regulations, books, journals, articles, thesis, monograph, research grants reports, seminar papers, electronic materials and data internet.

Keywords: Property Law, Strata Title, Apartment Ownership, Special Building

INTRODUCTION

The effects of urbanization in most developed and developing countries have resulted in the need for properties to be operated horizontally and vertically in order to overcome the land scarcity (Rebecca, Peter & Steve, 2018). As a result, Multi-Title Development (MTD) is being implemented in many countries, particularly in high-density peri-urban cities around the world. MTD creates various types of property ownership by designing multi-unit buildings (buildings with more than one level and many lots on each level) (Hashim, Hassan & Rahman, 2018; Noh, 2012). This legal form of property ownership is known as strata title and it is widely used in most countries around the world.

However, each country's strata titling is distinct from the others. It is known as condominiums in USA, copropriété in France, strata title in Australia, Singapore, Indonesia and Malaysia, Wohnungseigentum in Germany, sectional title in South Africa and commonhold in England (Troy et al., 2016; Easthope et al., 2014; Randolph & Easthope, 2009). Meanwhile, according to Shukri & Ainul (2010), referring to the Strata Titles Act 1985 (Act 318) construes strata title as the title issued in respect of parcels or units in a building having two (2) or more stories or subdivided land on which there is a completed building of not more than four (4)

stories when the proprietor of the land on which the subdivided building or subdivided land, applies for strata subdivision and the application is approved by the authority.

The vast stratified around the world affects Malaysia to escalate the multi-unit buildings as according to DGLM (2020), it is relatively 1, 444, 858 of strata schemes have been registered in Peninsular Malaysia includes Federal Territory of Labuan. The stratified development in Malaysia mainly targets the multiple ownerships for various development such as residential, commercial industrial or mixed-used properties. Therefore, STA 1985 as a dominant legislation for governing and administering the subdivision buildings into parcels in Peninsular Malaysia has undergone a number of modifications and amendments to meet the current development and socio-economic demands in stratified development.

Regardless of its modifications and amendments, one of the most pressing current issues in stratified development for the old-stratified scheme is the absence of strata title as a result of the non-issuance and transference of strata titles to parcel owners (or purchasers) of the old-stratified scheme. Thus, Strata Titles (Amendment) Act (STAA) 2007 (known as Act A1290) has been amended following by Strata Titles (Amendment) Act (STAA) 2016 (known as Act A1518) to constitute special building for strata title application of old-stratified scheme. According to Section 4 of STA 1985, special building is an old-stratified scheme that was either occupied before June 1996 or any stratified building occupied from June 1996 until 11 April 2007. Thus, this paper aims to present an overview background of legal contexts of strata title application for special building in Malaysia

Strata Ownership Issues from the Perspectives of Parcel Owner (Purchaser)

The absence of strata title is a serious issue that is being a result from the non-issuance and transference of strata title from original proprietor to parcel owner (purchaser) of old-stratified scheme, particularly for building that was built before the implementation of amendments of STAA 2007 on 12 April 2007. Hence, in order to abate these issues, Malaysia Federal Government has amended STAA 2007 following by STAA 2016 to constitute special building.

According to Section 81(1)(c) of STA 1985, States Authorities are given an authority to enact own rules concerning special building as such the rules are consistent with STA 1985. The order is given to overcome the abundance of old-stratified schemes that have faced the absence of strata title among parcel owner (purchaser). However, the number of strata title applications for special building has non-significant increasing since STA 1985 has introduced special building through STAA 2007 and STAA 2016 as certain States do not show improvement in the number of applications. It can be indicated in Table 1 and Figure 1 as follow.

States	No. of Scheme	No. of Parcel	Ongoing Application Process		With Strata Title		Without Strata Title	
			Scheme	Parcel	Scheme	Parcel	Scheme	Parcel
Melaka	115	11,001	0	0	59	2,676	56	8,325
Negeri Sembilan	25	5,976	0	0	0	0	25	5,976
Perak	73	3,314	0	0	0	0	73	3,314
Putrajaya	55	1,410	2	52	53	1,358	0	0
Perlis	3	1,224	2	1,196	1	28	0	0
Kedah	24	3,915	0	0	14	2,900	10	1,015
Pahang	306	15,463	0	0	147	10,296	159	5,167
Selangor	792	182,872	0	0	364	79,928	428	102,944
Penang	166	35,938	0	0	145	30,907	21	5,031

Kuala Lumpur	79	18,839	6	5,449	41	6,467	32	6,923
Johor	350	2,916	0	0	244	1,600	106	1,316
Kelantan	26	5,134	0	0	24	5134	2	-
Terengganu	7	588	0	0	0	0	7	588
Total	2021	288,590	10	6,697	1092	141,294	919	140,599

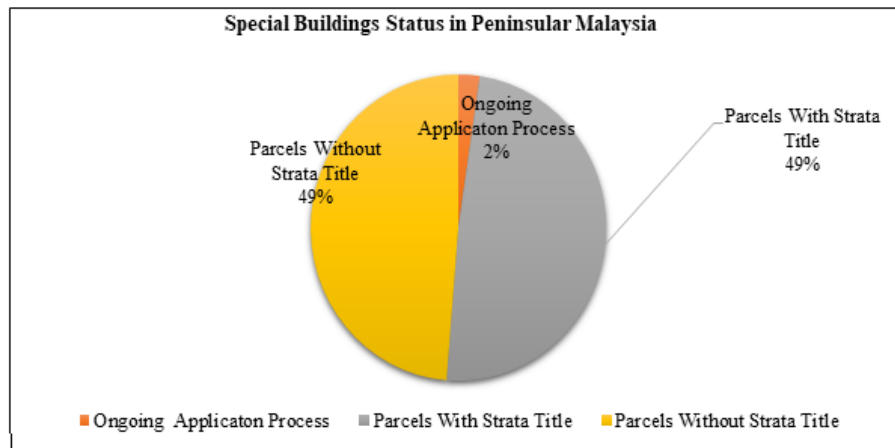


FIGURE 1
SPECIAL BUILDING STATUS IN PENINSULAR MALAYSIA
SOURCE: DEPARTMENT OF DIRECTOR GENERAL OF LAND AND MINES (UNTIL AUGUST 2019)

According to both Table 1 & Figure 1, it is proved that the number of strata title applications for special building in the States other than Federal Territory of Putrajaya & Kuala Lumpur & Perlis do not show any progress even though Malaysia Federal Government has given authority to States to implement any guidelines to cope with the absence of strata title for old-stratified schemes. According to Khadijah, et al., (2015), the non-issuance of strata title for special building occurred as a result of the developer's failure to apply for strata title due to bankruptcy. It emphasizes the perspectives of interested parties such as developer who plays a key role in the conveyance of strata properties. As a consequence, it gives the inaccessibility to parcel owner (purchaser) as legal proprietor to exclusively enjoyed the ownership & possession.

According to Shukri & Ainul (2010), parcel owner (purchaser) is unable to transfer their parcel to a subsequent purchaser or engage in other transactions such as lease and charge due to the absence of strata title because the developer is bankrupted before the strata title application takes place. Therefore, the application for the issuance and transference of strata title to parcel owner (purchaser) will be pending. Meanwhile, Weir (2018); Khadijah & Faridah (2002) stated in their studies that parcel owner (purchaser) of a subdivided building could not have their guaranteed rights of indefeasibility of title if there is non-issuance of strata title. Therefore, they could not make any dealings of their properties. The current purchaser is not the legal owner of the purchased parcel because developer is still as an original proprietor of the said land where the subdivided building has stand. It is happened because the interest in land could not be transferred if there is no registration in document of title. Meanwhile, the only owner's name who is registered in the document of title has the conclusiveness of the registration and indefeasibility of title as stated in National Land Code 1965 (NLC 1965). Therefore, the parcel owner (purchaser) has to use Sale and Purchase Agreement (SPA) to transfer the rights of the property to another party.

In the previous study by Khadijah & Faridah (2002), the parcel owner (First Purchaser) faced difficulties during the sub-sale transaction as he or she has to sell the property to another purchaser (Second Purchaser) through SPA instead of using Title Deed since SPA is the most

eligible proof of ownership in the absence of strata title by First Purchaser. In the unavailability of strata title, SPA is signed simultaneously with the Deed of Mutual Covenant (DMC) (HBA, 2002) as stated in Schedule H of Housing Developers Act (Regulation 11 (1)) in lieu of Memorandum of Transfer (MOT) or known as Form 14A as provided under NLC 1965 (Khadijah & Faridah, 2002). DMC is an agreement between a developer and a parcel owner (purchaser) that binds all parcel owners in a strata scheme to the rules that govern the use of common property (Chong, 2020 & Wong, 2013). When the strata title is issued to the parcel owner and the Management Corporation (MC) is formed, the DMC remains in effect.

In order for First Purchaser to sell off the property to subsequent purchaser (Second Purchaser), First Purchaser has to obtain a consent from responsible developer & has to pay the consent fees. Prior to the implementation of the amendments to the Housing Development (Control & Licensing) Regulations 1989 (Housing Regulations), any purchaser who wishes to sell their property before the strata title has been issued must pay the developer an administrative charge. The amount charged varies between developers or, in some cases, between the original purchaser and subsequent purchasers of the property. Developers can only charge 0.5 percent (%) of the purchase price or RM500 whichever is lower as of December 1, 2002.

In the event when the responsible developer is insolvent or liquidated, the First Purchaser will be forced to go through some complicated and time-consuming procedures in order to obtain the consent from the Official Receiver who is a Director General of Insolvency (DGI). Meanwhile, he or she must work with the appointed liquidator to apply for strata title on behalf of the original proprietor or responsible developer that is being declared bankrupt. As a result, the parcel owner (purchaser) would be unable to transfer his or her ownership of the property rights to a new purchaser in the future due to the unavailability of strata title. Indeed, these issues are the most common difficulties faced by parcel owner (purchaser) as he or she is the most affected parties and grant the uncertainties of the rights over the property that he or she has purchased.

Legal Provisions of Strata Title Application for Special Building

Strata title application for special building will be implemented according to the foci legal provisions that regulate the current and adequate stratified development legislations and regulations. There are four legal provisions precisely involve in strata title application for special building; Strata Titles Act 1985 (Act 318) the circulars of Director General of Land and Mines (JKPTG) and Director General of Survey and Mapping Malaysia (JUPEM) and States Strata Titles Rules.

Strata Titles Act 1985 (Act 318)

Strata Titles Act 1985 is the underpinning strata title legislation and regulation that is being authorized in Peninsular Malaysia includes Federal Territory of Labuan started from June 1, 1985 until these days as to mitigate the inadequacies and weaknesses from previous legal provisions by NLC 1965 in related to subdivided building. As stated in a study by Shukri & Ainul (2010), the prime reasons of STA 1985 establishment are to provide uniformity of legislations and regulations related to strata title application and registration, transferences and leasing of parcels and rights and interests of parcel owner (purchaser) of a subdivided building or land.

Special building is introduced through the Strata Titles Act (Amendment) 2007 (Act A1290) in order to assist the parcel owner (purchaser) of old-stratified scheme in getting the ownership rights through the issuance of strata title by responsible authorities. The next amendment of STA 1985 that pertinent to special building is Strata Titles Act (Amendment) 2016 (A1518). It aims to improve and revise the requirements of strata title application for special building that exclude several technical documents involved for the application. Therefore, several provisions have been amended to resolve the insufficient technical documents

to apply for strata title. The mentioned provisions are Section 8A (Application for Certificate of Proposed Strata Plan (CPSP)), Section 9 (Application for Building Subdivision), Section 20A (Application for Certificate of Proposed Strata Plan (CPSP) for provisional block) and Section 20B (Application for Building Subdivision for provisional block). These amended provisions will preclude the involved technical documents such as certificate by Professional Architects or Professional Engineer and Certificate of Fitness for Occupation (CFO) or Certificate of Completion and Compliance (CCC).

Circular of Director General of Land and Mines (No. 5/2017)

In line with the implementation of Strata Titles Act (Amendment) 2016 (A1518), Department of Director General of Land and Mines (JKPTG) has enforced an order through the Circular No. 5/2017: Strata Title Application for Special Building to advise all the States Director of Land and Mines (PTG) and Land Administrators that related to strata title application for special building. Therefore, through the same circular, the States Authorities also are advised to impose the regulations or guidelines in States Strata Title Rules to classify the old-stratified building as special building. The characteristics old-stratified building and other factors will be taken into account to be classified as special building that will be determined by the State Director of Land and Mines (PTG) before the issuance of Special Building Certificate.

Circular of Director General of Survey and Mapping Malaysia (No. 2/2017)

In line with the implementation of Strata Titles Act (Amendment) 2016 (A1518) which has allocated several technical documents to be exempted such as certificate by Professional Architects or Professional Engineer and Certificate of Fitness for Occupation (CFO) or Certificate of Completion and Compliance (CCC) as stated in Section 8A and Section 20A. Therefore, this circular is imposed to inform the State Department of Survey and Mapping (JUPEM) to exclude these technical documents during the application phase of CPSP for special building. Furthermore, State Director of Survey and Mapping can exclude the technical documents for development projects which are under Federal and State Government after negotiating with State Land and Mines.

Strata Title States Rules

The States Authorities are given a power to establish States Strata Titles Rules as such the provisions in STA 1985 are consistent with the rules enacted by States Authorities. Every State Authority in Peninsular Malaysia includes Federal Territory of Labuan can enact the variations, modifications, adaptations, additions or deletion relating to any provisions of STA 1985 as such the provisions are consistent with the States Rules. States Strata Title Rules must be published in the respective State Gazette before it can be executed. Therefore, according to Section 81(1)(c) of STA 1985, States Authorities are given a rule to enact legal regulations under States Strata Title Rules concerning the implementation of strata title legislation for special building matters.

The Key Approach of Special Building

There are two requirements to classify the special building; the time ranges of when the old-stratified scheme is being occupied as illustrated in Figure 2 and building certificate.

Time Ranges of Building

The classifications of special building are influenced by the time ranges when the old-stratified scheme is being occupied. The old-stratified scheme before being classified as 'special

building’ can be manifested by different amendments of STA 1985. Hence, the provisions in amendments of STA 1985 will be the root causes as the approach to classify special building. The mentioned amendments are Strata Titles (Amendment) Act (STAA) 1996 (known as Act A951) implemented on August 2, 1996 and STAA 2007 enforced on April 12, 2007. The provisions amended before and after STAA 1996 will be compared with the provisions amended in STAA 2007 which encompasses the key change in both amendments. Therefore, it is important to identify the key change ascribed between those amendments that involve the processes and procedures of strata title application for special building as shows in Table 2. It approaches only one (1) key change; the compulsory transfer of ownership of strata title.

Table 2 THE KEY CHANGES OF AMENDMENTS BEFORE AND AFTER STAA 1996 & STAA 2007		
Key Changes	Amendments Provision (Before and After STAA 1996)	Amendment Provision (STAA 2007)
Compulsory Transfer of Ownership of Strata Title	NIL	New Section 40A: 1) Any original proprietor or any person or body appointed by a court of competent jurisdiction shall execute the transfer of strata title to parcel owners within 12 months from the date of issue of strata title by Land Administrator or any extended period approved by Director of Land Office and Mines upon the opening of strata register. 2) Any purchaser shall execute complete documents of transfer of strata title within 12 months or any extended period by Director of Land Office and Mines from the date of notice of transfer of strata title issued by original proprietor or from the date of purchase of parcel, whichever is later. 3) Any original proprietor or any person or body appointed by a court of competent jurisdiction or any purchaser who fails to comply with the subsection (1) or (2) shall be guilty of an offence and shall be liable to a fine of not less than RM 1,000.00 and not more than RM 10,000.00 per parcel.

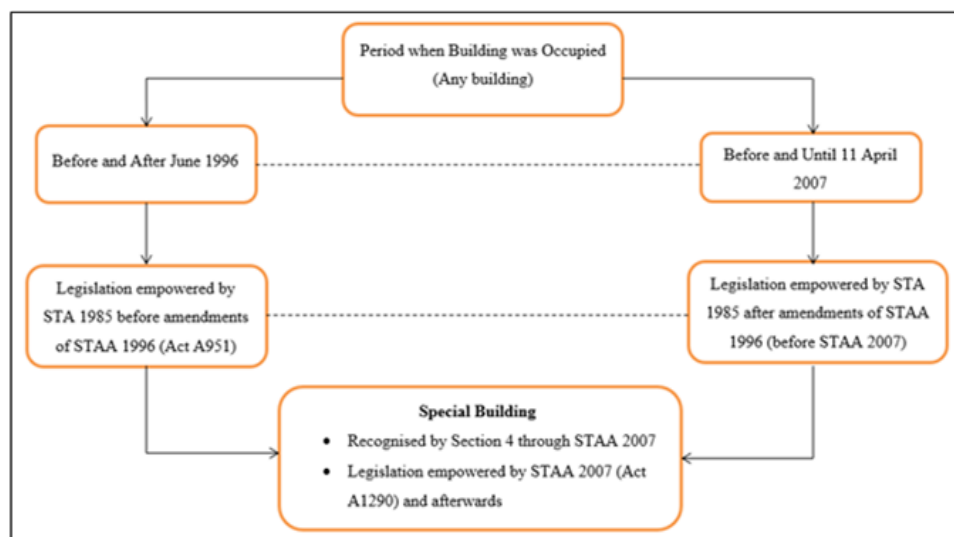


FIGURE 2
THE TIME RANGES OF BUILDING

According to the table above, there is no provision stated in the amendments before and after STAA 1996 regarding to the responsibilities and roles of original proprietor or developer to transfer the strata title to parcel owner (purchaser). This shortcoming is the underpinning and indicator to show the inadequacies and insufficiencies from the previous strata title legislation. It drives to the non-issuance of strata title that may happen due to the failure by original proprietor or developer to apply for strata title from the responsible authorities. Therefore, Section 40A of STAA 2007 has been amended for original proprietor or developer to be obliged to transfer strata title to parcel owner (purchaser) within 12 months from the date of issuance of strata title by responsible Land Administrator.

Meanwhile, according to Section 8 & Section 20 of Strata Titles (Amendment) Act (STAA) 2013 (known as Act A1450) that has been forced on June 1, 2015, any original proprietors that fail to apply for strata titles on behalf of the parcel owner of building or land are liable to a fine of between RM10,000 & RM100,000 or imprisonment for a term not exceeding three years or both. This provision would be a challenge for original proprietor or developer to hand over the strata title to parcel owner if any documents could not meet the requirements for strata title application. It would impactful the parcel owner (purchaser) to make any land dealings in future without a strata title as a proof of their rights to own the property.

The existence of property without strata title is a result of loopholes in previous law. The STAA 2013 has now sealed previous loopholes that had contributed to the delay in issuance of strata title. It introduces a new concept known as the delivery of Vacant Possession (VP) with strata titles. With this new concept, the interest of the buyers of the stratified development is further guaranteed whereby it is now made compulsory to the developer to obtain strata titles before or simultaneously with VP can be delivered to purchaser. However, noting that the amended of STAA 2013 enforced on June 1, 2015. Thus, projects approved after the date will be enforced with the stipulation of VP with strata title. This concept is used for building to be built but not for existing building especially for the old-stratified schemes.

Building Certificate

The other requirement to classify special buildings is certification of building to be fit for occupation or use issued by local authorities or by certification in accordance with the provisions of any written law for time being in force. Special building is being introduced in STAA 2007 to manifest the absence of strata title by parcel owner (purchaser). It puts parcel owner (purchaser) at a disadvantage stake when it comes to land dealings such as transfer or charge or lease of parcel. Therefore, the circular of Director General of Land & Mines (No. 5/2017) has stipulated the requirements for the certificate by Professional Architect or Professional Engineer & CFO or CCC to be excluded in the cases the issuance of strata title for special building in the line with the provisions of Section 8A, 9, 20A and 20B of STAA 2016.

There are two factors why CFO or CCC to be exempted for issuance of strata title for special buildings. Firstly, any original proprietors or developers who intend to subdivide building or land need to apply CPSP as stated in STAA 2013. CPSP is played to be the most main role to issue strata title. The definition of CPSP according to interpretation by STAA 2013 is 'certificate of proposed strata plan' means the certificate certifying the proposed strata plan prepared under section 8A or 20A.

The commencement of STAA 2013 that introduced a new concept delivery of VP upon strata title wherein it is mandatory for original proprietor or developer to apply CPSP within three (3) months after the issuance of Super Structure Stage (SSS). Original proprietor or developer needs to submit the proposed strata plan for the approval by the State Director of Survey and Mapping for issuance of CPSP and then submit the application for building or land subdivision to State Director of Lands and Mines for registration of strata title. Before the amendment of STAA 2013, strata titles application can only be submitted to the land office within six (6) months after CCC or CFO which means building is already being occupied. With

the new amendment, it is requirement to start the application with SSS that is upon completion of building works witnessed by Form G12 to materialize the new concept delivery of VP upon strata titles, the starting point to apply strata titles is under by-laws made under the Street Drainage and Building Act 1974 (Act 133).

Therefore, CPSP is basically a certificate issued by the State Director of Survey & Mapping in accordance with section 8A or 20A as evidence that he is satisfied that the plans (location plan, storey plan and delineation plan, whichever is applicable) are in order. The justification for the requirement for CPSP is to ensure that the technical aspects of the application namely the boundaries, air space permits (if any) and technical documents have been inspected and presented as in order at the earlier stage which is at the stage of CPSP. At this stage, if any developers could not full-fill the requirements for issuance of CPSP, the most pivotal next step for strata title registration process; the subdivision of building and/ or land will be expedited. Thus, it unable the issuances and transferences of strata ownership to parcel owner.

The second factor is the Certificate of Fitness for Occupation (CFO) from the local authority was not sufficient (Helmi, 1992). Cheah (1996) stated any application for strata title could not be made if the building has not yet been issued with CFO by local authorities which will delay the issuance of strata title by Land Office. According to HBA (2007), there are some problems arise upon the issuance of CFO by local authorities. The non-compliance by the developer for the submission of Form E and its enclosures to the local authorities, additional conditions imposed by the local authorities at the time of application of CFO, the involvement of many technical agencies and the lack of technical officers to process the CFO are being the factors of abolished CFO. Buyers also complaint that they could not occupy or renovate their properties because the CFO was not issued.

Therefore, in April 11, 2007, the Federal Government has replaced CFO that being issued by local authorities under the Uniform By-Laws of the Street, Drainage and Building Act 1974 (Act 133) with CCC to be issued by Professional Architects and Professional Engineers as well as Building Draughtsman registered with the Board of Architects Malaysia (LAM) (REHDA, 2016). CFO is a document issued by a local authority to owner of premises attesting that the premises have been built and maintained according to provisions of building regulations (HBA, 2007). It is a proof that the building follows the plans and specifications that have been outlined by Act 133 and other regulations to be approved by local authorities.

However, as stated in the circular of Director General of Land and Mines (No. 5/2017), it depends on States Strata Titles Rules either the mentioned technical documents; CFO or CCC and Certificate by Professional Architect or Professional Engineer will be excluded for CPSP application. Furthermore, in the same circular, it also will depend on States Strata Titles Rules to impose and manifest the characteristics of special building to be classified as special building as stated in Section 4 of STA 1985.

CONCLUSION

Each parcel & land parcel consists of sole area by means separate strata title is issued upon the approval of subdivision of a building or land into separate parcels. Any parcel owner of subdivided buildings or land have rights to modify, transfer, lease, & mortgage their properties. The strata schemes ownerships registered under STA 1985 are official proof of a parcel owned by registered owner. The key approach of special building may give the overviews about the key change of amendment of STA 1985 on how special building in Malaysia has been introduced & established into Malaysia Strata Title Legislation. In a nutshell, in many cases, old-stratified schemes which have been built as early as the 1950's were not only in poor physical condition but also lacking of important documents that are very needed for the issuance of strata title to parcel owner (purchaser).

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