Bill Amending The Law On En Bloc Sales Introduced In Parliament

The Land Titles (Strata) (Amendment) Bill was introduced in Parliament on 27 August 2007. This follows from a public consultation on the Land Titles (Strata) Act (‘Act’) to amend the legislation for en bloc sales in Singapore that was launched in April 2007. The following are some of the key changes that have been proposed:

- additional requirement to be met before an application for any collective sale of a development may be made to a Strata Titles Board (‘Board’);
- provide for the composition, constitution and proceedings of a sale committee;
- empower a Board to increase the proceeds of an owner who has objected to an application for collective sale;
- empower a Board to disregard technical or procedural irregularities in an application;
- enable a subsidiary proprietor who has signed a collective sale agreement to rescind his agreement to be a party to the same within a fixed period; and
- require a valuation report from an independent valuer reflecting the value of the development as at the date of the close of the public tender or auction.

The changes are far reaching as they aim to provide more safeguards to subsidiary proprietors. As a result, the members of collective sale committees and their proceedings are subject to many new requirements. Another desirable outcome is that more flexibility has been given to the Board to enable applications to be processed more smoothly.

This Update highlights some of the changes to be introduced.

Majority Needed Before Sale May Proceed

Currently, an application for an en bloc sale may be brought before the Strata Titles Boards if the subsidiary proprietors holding at least 80% (where the development is 10 years or older) or 90% (where the development is less than 10 years old) of the share value in the development.

A second condition will be imposed, based on area, so that in addition to holding 80% or 90% (as the case may be) of the share value in the development, the subsidiary proprietors must also collectively own 80% (where the development is 10 years or older) or 90% (where the
development is less than 10 years old) of the area of the development.

Sale Committees

The currently legislation does not regulate sale committees for en bloc sales. To enhance transparency and accountability, many new provisions on sale committees have been proposed. The Act will be amended to provide that a sale committee must be constituted prior to the signing of a collective sale agreement by any subsidiary proprietor. The members of the committee must be elected at a general meeting of the management corporation. Rules for general meetings for en bloc sales and the composition, constitution and proceedings of sale committees are respectively set out in the proposed new Second and Third Schedules to the Act and must be complied with before an application may be made to the Strata Titles Boards.

The new provisions place a great deal of emphasis on the members of a sale committee. A sale committee must have between three and 14 members who are natural persons. A person may not be appointed to the committee unless he is at least 21 years of age and an owner or a nominee of an owner. An undischarged bankrupt or a subsidiary proprietor of a lot in respect of which contributions owed to the management corporation are in arrears will only be eligible to stand for election if his status is declared in writing at the time of his nomination. A person standing for election as a member of the collective sale committee must disclose the nature of any direct or indirect interest with a property developer, property consultant, marketing agent or legal firm that could conflict with the performance of his function as a member of a collective sale committee at a general meeting.

A new provision stipulates that the persons representing the subsidiary proprietors in the Strata Titles Board application should be chosen from among the sale committee members. Currently, the Act provides that the subsidiary proprietors appoint representatives from among themselves without specifying that the representatives must be sale committee members.

Collective Sale Agreement

A new paragraph in the First Schedule provides that where the collective sale agreement is signed in Singapore, it should be witnessed by the lawyer appointed by the sale committee. Subsidiary proprietors will also be given a 'cooling-off' period of five days after the date of the signing, during which they may serve a notice rescinding their agreement to be a party to the collective sale agreement.

A new requirement has been introduced to require the sale committee
to provide a preface to the collective sale agreement listing the clause and page numbers in which key information such as reserve price, apportionment of sales proceeds, fees payable to various parties, date of delivery of vacant possession may be found.

Collectively, these provisions provide more safeguards to subsidiary proprietors during the process of signing the sale agreement.

**Powers Of A Board**

The proposed amendments will provide the Board with more flexibility to deal with objections arising from the en bloc sale of a development. The Board will be specifically allowed to increase the proceeds of sale which a subsidiary proprietor who has objected to a sale will receive, provided the sale committee consents and the increased sum paid to the objector does not exceed the aggregate sum of 0.25% of the proceeds of sale for the lot or S$2,000, whichever is higher. The increase will come from the proceeds of sale of all the subsidiary proprietors.

The Board will also be given the power to rectify any irregularity arising from the non-compliance with any requirement in the new First, Second or Third Schedules if it is satisfied that the non-compliance does not prejudice the interest of the any person. No such discretion is currently provided for in the Act.

Currently, the Board is entitled to determine which deductions are allowed for the purposes of determining if a subsidiary will suffer financial loss as a result of the sale of the development. The new provision retains the Board's discretion to determine what deductions are allowed, but also provides that a Board may specifically allow certain deductions, which include the following:

- stamp duty paid on the purchase of the lot;
- legal fees paid in relation to the purchase of the lot; and
- costs incurred pursuant to the collective sale which are to be shared by all subsidiary proprietors under the collective sale agreement.

**Other Amendments**

Presently, there is no prescribed manner in which the sale of a development must take place. A new provision will be inserted into the Third Schedule to provide that the launch for sale of a development may only take place by public tender / auction. The collective sale committee is permitted, however, to enter into a private contract with a purchaser for the sale of the development within 10 weeks form the close of the public tender / auction.

The current law requires a valuation report that is not more than three
months old to be given to each subsidiary proprietor of the development. It has been proposed that the law be changed so as to provide that the valuation report must originate from an independent valuer and the report must report on the value of the development as at the date of the close of the public tender or auction.

Conclusion

With the large volume of en bloc sales applications being adjudicated by the Strata Titles Board, these changes are a welcome step in bringing greater transparency and certainty to all parties involved. If you would like more information on the proposed changes, please contact Lee Lay See or Gan Hiang Chye, whose contact particulars appear on the first page, or contact the Knowledge & Risk Management Group at eOASIS@rajahtann.com, and we would be happy to assist you.