

# Strata Law – The bottom line for developers

By Gary Bugden\*

**Developers stand to make substantial gains under Dubai’s new Strata Law, but at a price! This article looks at the price developers will pay for these gains.**

Dubai’s new jointly owned property laws will deliver tangible benefits for real estate developers. In the medium term the most significant benefit will be a world class title system for apartments and villas that will underpin the Dubai real estate market as it moves into recovery mode. It will ensure that both local and international buyers have the confidence to buy and hold Dubai real estate assets. This confidence will be supported by a bankable title for financiers and the backing of that title by the Dubai Government itself.

## **Immediate benefits**

The most significant immediate benefits will be a suite of titling and management mechanisms available for use by developers. These include –

- Strata titles (i.e. titles for apartments where common areas are set aside and administered by an Owners Association).
- Community titles (i.e. titles for villas and houses where common areas are similarly handed to an Owners Association).
- A Jointly Owned Property Declaration to allow a degree of flexibility in the way in which projects or parts of projects are structured.
- Volumetric titles (where buildings are divided into different ownership areas, but with an enduring contractual arrangement being substituted for an Owners Association). This arrangement will be set out in a Building Management Statement, which is a legally sanctioned and registered form of contract.
- Strata title subdivision of a volumetric ownership area to create titles to floors or apartments in part of a building (the common areas within that part being handed to an Owners Association while leaving the other parts of the building free of the influence of any Owners Association).
- Tiered or layered Owner Association structures to accommodate large scale master planned communities.

These mechanisms will allow developers to achieve outcomes for their projects that were not possible under the previous land title and ownership regime in Dubai. For example, the volumetric subdivision mechanism (with or without the strata title overlay) will allow

developers to separate commercial components of a building from residential components, thus giving the commercial components a separate title and removing them from an Owners Association structure. As the Dubai real estate market matures, this has the potential to increase the value of the commercial assets by enhancing their marketability.

### **Key provisions**

Like most things, these mechanisms come at a price. The price to be paid by developers flows mainly from the following aspects of the new law:

- An obligation to bring existing projects under it.
- The empowering of owners through the Owners Association structure.
- Restrictions on long terms and contents of “supply agreements”.
- Consumer protection provisions.

Some of these have direct cost implications, while others have the potential to change the way in which development currently occurs in Dubai.

### **Existing projects**

All existing projects must be registered under the strata law. An existing project is a project, or part of a project, that has been constructed and occupied as at the date the implementing Regulation took effect. However, the Land Department may determine that a project that does not squarely fall within that definition should also be regarded as an existing project.

While the Regulation makes it clear that the total area of land being master developed by a master developer is not required to be registered under the Strata law, individual projects within the master community will be caught. For example, particular buildings or villa home neighbourhoods will be required to be brought under the law. A key determining factor will be the extent to which they share common areas, such as access roads, open space, recreational facilities, etc. in the case of villas.

To bring an existing project under the law, a developer (including those who have long since completed their developments) will need to have a range of documents prepared, including:

- Site Plan
- Common Areas Plan
- Affection Plans for each of the “Units” (whether villas or apartments)

- Jointly Owned Property Declaration.

They will then apply for registration of an Owners Association using RERA's new on-line Mollak system and after registration they will be responsible for establishing the Owners Association and handing it over to the owners at a meeting known as the First Annual General Assembly. For a short time the otherwise stringent survey requirements for plans will be relaxed to minimize the costs for developers associated with this registration process.

If developers delay in registering Owners Associations the owners themselves will be able to proceed to register and the costs incurred will be recoverable from the developer. This will also lead to the developer losing control of the content of key documents, such as the Common Areas Plan and the Jointly Owned Property Declaration.

### **Empowering of owners**

An Owners Association is essentially a democratic organization. The owners (or shareholders) elect a Board to run the community or building and the Board reflects the views and interests of the owners. While a developer may be a member of the Owners Association by virtue of their ownership of a Unit or multiple Units, unless they own the majority of the "Entitlements", they will not be able to carry a vote at a general assembly of the Owners Association. They will also not be able to control the Board.

In addition to this controlling aspect, the Constitution of the Owners Association (which is a fixed document) ensures that all processes, including budgeting, accountings, etc., are entirely transparent.

This combination of control and transparency will effectively change the relationship between owners and developers. It also means that some developers will need to change their whole approach in the way in which they deal with owners.

### **"Supply Agreements"**

A supply agreement is an agreement for a term exceeding one year for the supply of goods or services, including Utility Services (which are extensively defined), to an Owners Association. This definition catches all forms of facility management arrangements, as well as an extensive range of agreements for the supply of goods. It catches such things as elevator maintenance agreements, caretaking arrangements, supply of pool chemicals, chilled water, telecommunications, etc..

The implementing Regulations prohibit supply agreements with an Owners Association where the term exceeds 5 years, including any option to renew. However, the Land Department may approve a longer term (up to 25 years) in “exceptional circumstances”. Applications to the Department will need to demonstrate that the longer term is for the benefit of the Owners Association and the terms of the agreement will need to comply with Directions issued by the Department. The objective is to ensure that the agreement is competitive and fair and that the performance of the supplier is regulated.

Even agreements for 5 years or less, if entered into by an Owners Association when the developer had control of voting, must contain specified provisions designed to ensure supply at competitive rates, adequate performance of the supplier and general fairness.

### **Consumer protection**

The underlying philosophy of the Strata law is for developers to be given a full set of titling mechanisms, along with relative freedom to use them, in exchange for complete disclosure to off-the-plan purchasers. This approach contrasts with most mature real estate jurisdictions where restrictions and prescriptive processes tend to be the norm. However, a strong desire to preserve the innovation and momentum of the Dubai development scene influenced the final approach.

This disclosure for off-the-plan purchasers is the core consumer protection mechanism of the law. It requires the developer to disclose in writing a wide range of information and documents, relevant to the Owners Association, including:

- A description of aspects of a building or project, such as land and building uses, common area facilities, environmental sustainability matters and items included in the sale.
- A Schedule of Materials and Finishes.
- A budget to both a General Fund and a Reserve Fund.
- An estimate, based on those budgets, of the service charges for the first 2 financial years of the Owners Association.
- Arrangements for the supply of Utility Services, including special information where they are to be provided by a non-Government entity.
- An estimated hand-over date.
- A draft Unit plan showing areas (calculated in accordance with Department Directions).
- A draft Common Areas plan.

- A copy of the proposed Jointly Owned Property Declaration (which will need to describe how the project is being structured).
- A copy of any proposed Building Management Statement.
- A copy of any supply agreement proposed to be entered into by the Owners Association (which would need to have been approved by the Department if it is to be for a term of more than 5 years).

These disclosure requirements will be progressively phased in over a 9 month period so that developers will have time to prepare the materials required for disclosure. However, given the amount of work involved in structuring the larger projects, developers will need to act quickly to ensure that their ability to sell off-the-plan is not interrupted by the new disclosure regime.

### **Practical impact**

Apart from the costs aspect, the practical impact of these provisions will be the need for developers to address the operational structuring of projects during the early design and planning stages and well before any sale contracts are produced. This will require such things as title, subdivision, governance and management to be addressed early in the evolution of the project rather than after construction is drawing to a close and handover is approaching.

No doubt these new requirements and restrictions will affect a number of development related practices, including:

- Lack of transparency about service charges.
- Purchaser uncertainty about the product being purchased.
- Developer control over future maintenance and service provision.
- Developer failure to address governance and management structuring of projects.

They will also attract criticism from some developers. The fact is that some developers have seriously abused the unregulated environment that has existed until now. That abuse has reflected badly on the reputation of the Dubai real estate market, as is apparent from numerous recent press articles. Government intervention along the lines of the new laws was not only predictable, but was necessary to underpin the Dubai real estate market as it moves into recovery mode.

The next phase of the Dubai market will be the era of the “end user”, be they a longer term investor or a resident owner. The speculators will still be present, but they are likely to be much fewer in number and less aggressive in their investment practices. The focus will be on

the “product”, which includes the way in which the building or community will function, and not simply on “where do I sign”. This new trend of project structuring and product refinement will be facilitated by the new laws and the strength and reputation of the Dubai real estate market will again reign supreme throughout the Region.

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