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A provisional block is a designated area within a phased development that is set aside for future development. Defined under Section 4 of the Strata Titles Act, it refers to a building or land parcel for which a provisional strata title is applied, distinguishing it from common property and independent parcels.

The details entail:

- In relation to a subdivided building, a block refers to a building that is either proposed to be erected or is currently under construction on a building or land for which a separate provisional strata title is applied for.
- In relation to subdivided land, a block refers to proposed

land parcels for which a separate provisional strata title is applied for.

- In relation to a certified strata plan, such a block is shown therein, for which a provisional strata title is to be registered.

- In relation to a book of strata register, such a block is shown therein, for which a provisional strata title has been registered.

Share units are similarly allotted to the provisional block. However, instead of being assigned to an independent parcel, these share units are allocated to the entire block or land parcels. The share units assigned to a provisional block are referred to as provisional share units.

A provisional block typically appears in phased developments. The area is often enclosed by the developer using green zinc sheets. Simply put, it refers to a designated area earmarked for the future construction of buildings. This empty plot of land represents the boundary within which the provisional block will be constructed, which may consist of either one en-bloc parcel or multiple parcels.

Conversely, this also means that a provisional block is not considered common property. The custody of the area within the boundary of a provisional block does not fall under the Joint Management Body (JMB) or Management Corporation (MC).

The JMB/MC has no statutory obligation to manage the area within the boundary of a provisional block. However, the JMB/MC remains responsible for

maintaining common property that is closely adjoining the provisional block. Additionally, expenses related to the ingress and egress of a circular road within the development should be shared with the provisional block proprietor, unless the provisional block is situated in a distinct area where it does not share access roads or pathways with other parcels.

Payment of charges and contributions

In that regard, the proprietor of the provisional block has a statutory obligation to pay charges and contribute to the sinking fund, despite not benefiting from the common facilities, as the building block has likely not yet been constructed.

As matters stand, the current regime compels the proprietor of a provisional block to pay charges under Part V of the SMA 2013. However, the payable rate may differ and usually covers expenses related to the common area serving both the scheme and the provisional block, such as ingress and egress maintenance, pest control and/or cleaning of surrounding common areas closely adjoining the provisional block. Additional costs may also include extra cleaning for heavy vehicles entering and exiting the scheme and façade cleaning of existing blocks. However, expenses related to facilities exclusively for the provisional block will likely not be included, as no maintenance costs will arise until they are installed.

Determining the payable rate for a provisional block is essential to ensure that charges remain fair and reasonable for the maintenance and management of the entire strata scheme. Water and electricity for the provisional block should always come from a separate source. However, if they are drawn from common property utilities, the proprietor must reimburse the JMB/MC based on actual consumption.

We want to ensure that the developer fulfils its responsibility in determining accurate rates at the inception of the scheme—specifically at the time of vacant possession delivery—so that they reflect both actual and expected expenditures for the scheme.

Additionally, our proposed amendments will reinforce the obligation to pay charges during the developer's management period, ensuring that similar statutory duties are upheld under Part IV of the SMA 2013.

On the same token, purchasers must understand that the parcels they acquire are part of a much larger strata scheme, with additional blocks planned for future development. This means there will be significant construction activity within the scheme in the near future, whether adjacent to or further from their parcels. These new buildings may be constructed on the same podium or in a separate, distinct area within the scheme. Ultimately, the full completion of the entire scheme may lead to greater price appreciation, potentially maximising property values.

With regard to voting rights attached to provisional share units, we are exploring the possibility of excluding them entirely or developing a balanced formula to prevent a developer or proprietor from using these units to dominate decision-making at general meetings.

Deed of Mutual Covenants

We are also of the view that, in a phased development, the existence of a provisional block within the scheme should be disclosed as early as the sale of parcels in Phase 1.

This will compel the developer to be transparent in marketing parcels during the early stages of the scheme, thereby avoiding any form of misrepresentation. Likewise, it will prevent purchasers from later claiming they were unaware of the phased nature of the development, attempting to nullify the sale and purchase agreement, or arguing that the developer or proprietor of the provisional block should pay the same uniform rate as other purchasers.

To ensure transparency, it is essential to clearly outline the following matters in a deed of mutual covenants:

- The entire strata scheme;
- Utility connections for the provisional block;
- Differentiated payment rates for provisional blocks;
- Commencement of payment obligations; and
- Construction hours as approved by the local authority.

Including these details will allow purchasers to make informed decisions before proceeding with a purchase while ensuring that the developer is fully prepared to pay charges and contribute to the sinking fund for the provisional block.

If you have any specific subject matter you feel strongly about which requires amendment, kindly email info@cheehoe.com or izzah@kpkt.gov.my

Provisional block: What does it mean?

