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Assessment on problems of issuances and transferences of Strata Title in Malaysia: The Perception of the owner

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Abstract

The ownerships of property as an asset, is a long-term investment for the owner. Strata Titles is a document of title which endorsed by the land administrator for the whole parcels of a subdivided multi storey building. Strata Titles important to purchasers as a proof of the ownership of the parcels they purchased as they will be able to persevere any deal which stated in Part IV of National Land Code that allow any titles' transferred, mortgage, leasing and any permitted activities to be carried out. However, there are problems in applying strata titles which will affect the ownerships of the parcels in a multi storey building. Normally, everyone will blame the developers as the causes of failure to appraise the issuance of the Strata Titles. This study will be focused on the problems which caused the failure of the issuances and the transfer of the strata to the purchasers. The study analyse from the perceptions of the owner of the parcels.

The findings of the survey found that the service and the maintenance fee are slightly high compared to the services offered by the Management Corporations. Besides, the owner refused to pay any outstanding bills on maintenance of their building and the mortgage and stamp duty disbursements are another factor for them to refuse the transference of ST. Based on these findings, several recommendations identified to reduce the problems of the issuance and transfer of the Strata Titles to the purchasers by providing transparent information, campaign and education regarding the importance and the process of issuances and transferences of ST

Keywords: Strata Titles, issuance, transference, perception, owner

1 Introduction

Development of strata property has rapidly grown in recent years. It is a trend of 20th century to increase the urbanisation in most countries including Malaysia. From the perspective of supply and demand, rapid urbanisation, high population growth, increase in investment opportunities as well as increasing job opportunities in the cities are making land scarce resources. The logical response is to maximise land use by building upward (Bahari.A 2001). As evidence, for the first quarter of 2008 Malaysia has 2,423,105 units of strata residential, 8,735,173 square meters shopping complex and 14,881,383 square meters purpose built office (NAPIC Q1 2008).

The accelerated in numbers of strata property has lead to the development and change on the pattern of property ownerships. High rise buildings have escalating built and its offer different types of property ownerships than landed property. This type of property gives a right to a property with the absence of strata title. As in order to fulfil demands of the right on high-rise properties owners, Malaysia has applied Strata Title Act (STA 1985) since late 1985. It is part of the National Land Code 1965 (NLC) which dealt with subsidiary titles. Basically, subdivision under the STA 1985 means the registration and issuing of a separate strata title for every unit in a building of two storeys or more. When the building is subdivided, title to the land which the building is subdivided. Title to the land on which the building erected continuously exists but it is automatically established on the

registration of strata titles to the parcels of the building, where the high rise properties were managed by the management corporation appointed by developer.

Unconsciously, undelivered Strata Title (ST) will confer the troublesome to the owners of the parcels. The documents might cover the owner on various uncertainties. It is seriously effects on the ownerships, difficulties in obtaining financing and uncertainties of the future (khadijah, 2002). In Bercham, Ipoh Perak, the owner of the low cost apartment was unable to receive the strata title for their parcels even though their houses have been occupied since 1994 (The Star, 24 November 2003).

2 Strata Title: The Ownership documents

Strata title means the ownerships of a unit in a subdivided building. The ownership of the unit is evidenced by a separate title called the strata title under STA, which issued in respect of the unit. The management corporation, which consists of all the owners of the units, is the medium through which the owner control and manage the strata scheme. The management corporation is responsible for the maintenance and the management of common properties such as open spaces, lifts, corridors, gardens and community facilities other than the units' respect of which of the individual titles have been issues and registered

Construction of condominiums, apartments, flats, and high-rise buildings in the urban areas such as Kuala Lumpur, Johor Bahru and Penang is a common phenomenon due to scarcity of lands in those areas and high land costs. The property market boom supported the massive development carried out in urban areas. This has encouraged some developers to construct their projects before the ownership of title has been issued. The effect is that the transfers of such properties can be problematic where there may be delays in transferring property rights to the respective purchasers. Since the transfer of title properties involves some interested parties such as developers, financiers, buyers and solicitors, the problem can have certain implications to one or more (Hussin, 2002).

As per third quarter of 2008, The National Property Information Centre's (NAPIC) reported that the strata residential stock in Malaysia consists of 1,232,848 units. The statistic on the strata residential includes Low Cost Flat, Flat, Service Apartment, Condominium / Apartment and Service Apartment. The detail of the statistic is tabulated as table 1

State	Low Cost Flat	Flat	Service Apartment	Condo / Apartment	Total (Unit)
Selangor	182,424	145,722	8,843	177,694	514,683
WP KL	82,519	48,136	5,507	126,269	262,431
Pulau Pinang	50,351	98,986	839	33,468	183,644
Johor	44,353	19,162	2,948	33,468	99,931
WP Putrajaya	-	2,538	-	-	2,538
WP Labuan	1,980	-	-	308	2,288
Perak	7,735	2,168	1,259	4,492	15,654
Neg.Sembilan	10,381	6,210	5,407	13,395	35,393

Melaka	5,919	6,073	345	10,359	22,696
Kedah	4,135	1,272	748	630	6,785
Pahang	3,768	2,589	647	7,479	14,483
Terengganu	3,120	1,176	-	625	4,921
Kelantan	514	436	-	778	1,728
Perlis	898	96	-	96	1,090
Sabah	14,258	7,992	904	15,970	39,124
Sarawak	13,728	2,497	9,234	-	25,459
Total	426,083	345,053	36,681	425,031	1,232,848

Table 1: Strata Residential Stock in Malaysia
Source: NAPIC, Ministry of Finance

The statistic above shows that the strata residential are mostly built in the city that is Wilayah Persekutuan Kuala Lumpur, Selangor, Penang and Johor. However the statistic details the quantity of unit and not the strata development by project. Therefore Dewan Bandaraya Kuala Lumpur on FABIABCI Malaysia & PPK Seminar (2008) informs that the total number of strata development are 9, 449 which consists of 9,319 of residential projects and 130 of commercial project. The figure 1 illustrates the strata development by project in Malaysia.

Strata Development in Malaysia

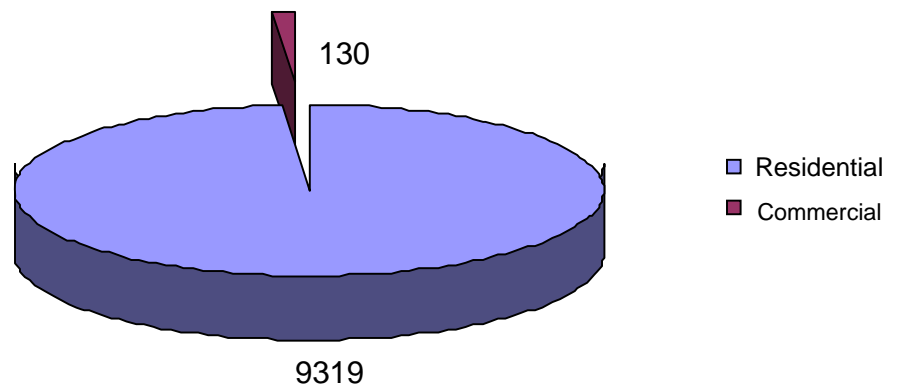
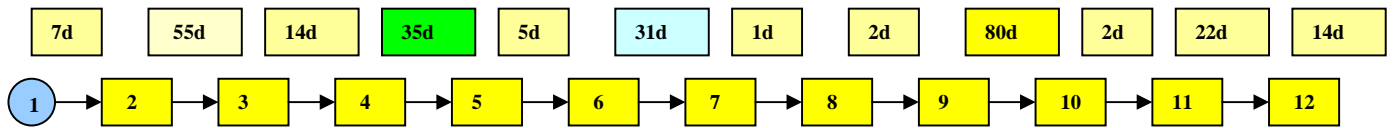


Figure 1: Strata Development by Project in Malaysia In 2008
Source: Dewan Bandaraya Kuala Lumpur (2008), "Property Managing Agent in Malaysia", FABIABCI Malaysia & PPK Seminar

2.1 Applications of Strata Tittles

Application for subdivision of building has to be made by the proprietor of land. The current process takes 268 days to issue the ST (Director's of Lands and Mines (2008)). Figure 2 explained the flows of application's process for ST in Malaysia. The process will be extended once the application is rejected and it will start all over again. This consumes another time to process another application.



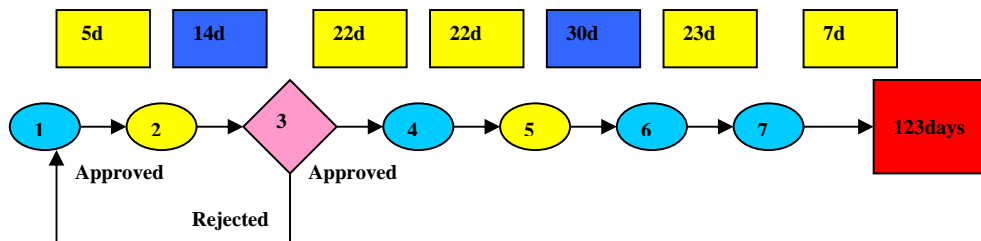
1	Application and approval made by the Land Administrator	7days
2	Checking of plans and survey by Director of Surveys	55days
3	Applications/advises to the Director's of Lands and Mines	14days
4	Result of application (Director's of Lands and Mines)	35days
5	Notify the result to the applicant (Land Administrator?)	5 days
6	Pay the approval of application fee	31days
7	Notify the Director's of Survey the approval of application fee being paid	1 days
8	Approval application send to the Director's of Survey	2 days
9	Checking the certified Strata Plans	80days
10	Forward to the Director's of Land and Administrator to register strata	2 days
11	Strata registration	22days
12	The issuance of Strata Documents	14days

TOTAL 268 days

Figure 2: The Current Scenario of Processing Strata Titles

Source: Director's of Lands and Mines Office (Felderal) Departments (2008), "Panduan Pelaksanaan Penambahbaikan Pengurusan Tanah", Circulation 1/2008

At 2008, the Director's of Lands and Mines has proposed the new flow of processing ST where it takes only 123 days to issue. Figure 3 shows the flow of the new process of ST's application.



1	Acceptance of application	7days
2	Checking and comment from Directors of Survey	14days
3	Result from Director's Lands and Mines	22days
4	Payment of approval of application fee	22days
5		
6		
7	Approval of certified plan and strata plan	30 days
8	Strata title registration	23days
9	The issuance of Strata title	7days
Total		123 days

Figure 3: The New Proposal of Processing Strata Titles

Source: Director's of Lands and Mines Office (Felderal) Departments (2008), "Panduan Pelaksanaan Penambahbaikan Pengurusan Tanah", Circulation 1/2008

2.2 Failure of application and transference ST

Azimuddin (2007) said that a total of 481,277 strata titles were successfully issued from 1993 till 2006. Of this, the highest number was for Selangor (159,453 titles), Penang (120,170), Kuala Lumpur (115,036) and followed by Johor, Negeri Sembilan, Malacca, Perak, Pahang, Terengganu, Kedah, Kelantan and Perlis (Homefinder, 2007).

The strata title applications received between 1993-2006, Selangor again topped the list with 6,092 applications for 319,102 unit of parcels were sent in, of which 3,385 applications for 195,274 units were approved, 59 applications for 3,341 units were rejected and another 2,648 applications for 120,487 units are still being processed. Kuala Lumpur sent in the second highest number of applications 2,570 applications for 171,870 units, of which 2,134 applications for 142,954 units were approved and 241 applications for 12,038 were rejected. Another 195 applications for 16,878 units are still being processed. Penang sent in 1,368 applications for 148,286 units, of which 1,223 applications for 128,572 units were approved, 30 applications for 287 units were rejected and a further 115 applications comprising 19,427 units are still being processed (Homefinder, 2007).

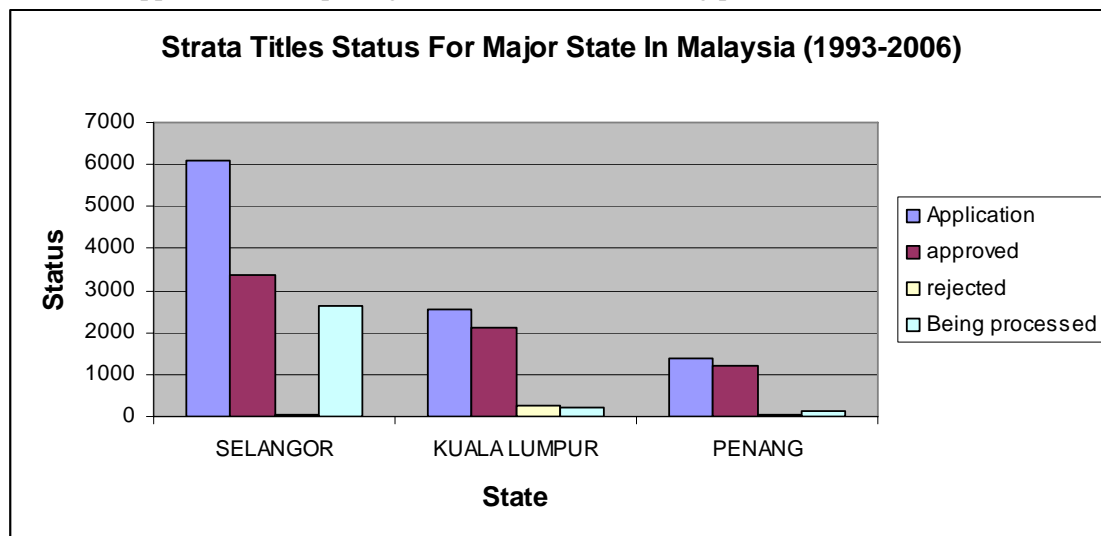


Figure 4: Strata Titles

Source:http://homefinder.com.my/index.php?option=com_content&task=view&id=523&Itemid=71

When one compares to the number of high rise development approved and completed each year as reported by the Valuation Department versus the number of strata titles issued by the Ministry since 1993, these numbers seem really small (NAPIC, 2006).

Exploring the reason of failure for the titles to be transferred, Zain (1997), Helmi (1992), Robiah (1991) alleged that the applications were not accompanied by the requirements of section 9 and 10 of STA 1985. They were not accompanied with satisfactory documents such as;

- I. schedule of parcels
- ii. architect's/engineer's certificates
- iii. Certificates of fitness (C.F/CCC) for occupation or issued by public or local authority
- iv. Approved buildings plans (including approved amended building plans)
- v. differences in details of the plans with actual building erected on the land
- vi. conflicting details in the building plan pertaining to common property with the actual building being used
- vii. buildings erected on lands being amalgamated

- viii. buildings do not have adequate access
- ix. Share units of each parcel allotted were not equitable
- x. permits to use space above the reserved land if there is any eave, awning or balcony projecting over road reserve

However, the abovementioned were normally affected by developer. Naziah (2004), Magendran (2000) and Sukeri (1999) found that the problems of issuance and transference ST are caused by the owners too. The problems appeared when the owner refused to disburse the mortgage and stamp duty, lack of understanding towards the importance of the ST, dissatisfaction on the service and the maintenance fee. Thus, it will present big effects to transfer the ST to them.

Figure 5 shows the flows of the transference of ST to tenants. The dispute occurs when the tenant refuse to pay any outstanding bills. This force the developer to hang the process with the financier

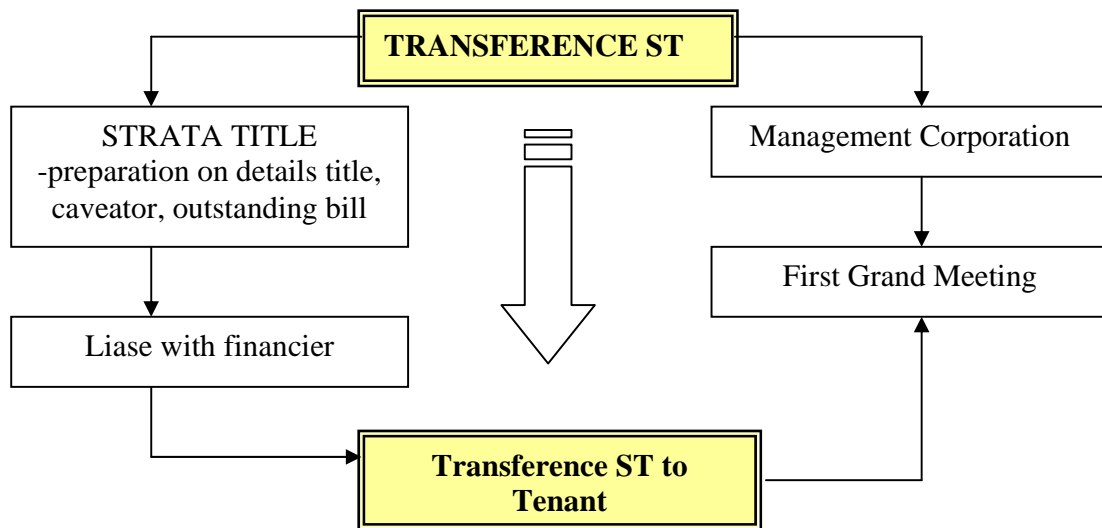


Figure 5: The process of transference ST
Source: inner circulation: developer (2008)

The service charge is the means by which an owner is able to recover from the occupiers the cost of providing the services for the benefit of those premises (Singh, 1993). However, it would be irrelevant for the tenant themselves if they wouldn't care less on what they are paying ever since. Tawil (2007) in his study revealed the difficulties face by management in collecting service charge. Those residents were not satisfied with the service charge fare and they need to know the disbursement of service charge even they paid on time. There are lots of complaints and also they think that they are paying more than the quality of service given to them. Schedule H falls under the Standard Sales and Purchase Agreement (SPA) has mentioned the service charges are paid to the vendor or developer to run the maintenance of the said building.

The SPA also describes the reimbursed feet should be settle during the transference of Certificate of Fitness (CF) and ST. include in the mortgage and stamp duty disbursement..

3 Methodology

The framework of this research is as shown in figure 6.

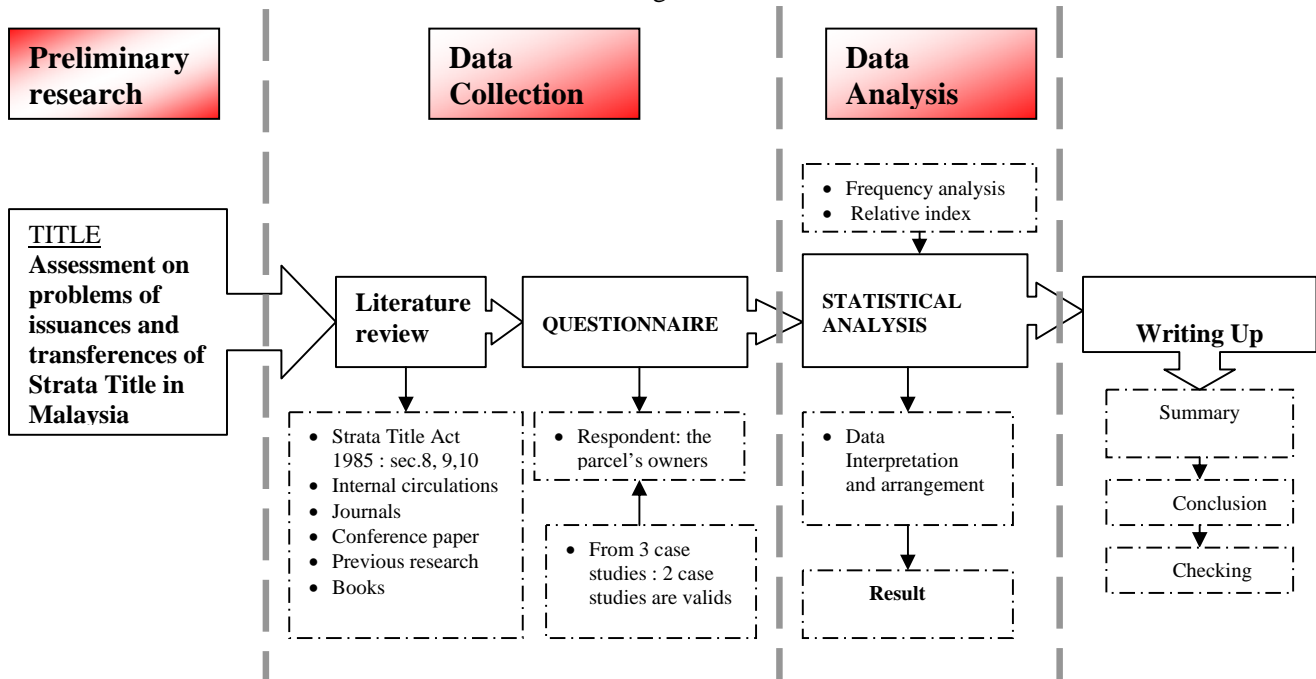


Figure 6: Framework

3.1 Case study of two residential strata developments

The research strategy adopted is quantitative in nature and data collecting technique is through personally assisted questionnaire. Respondents were randomly selected from two of three case studies as one is a service apartment and is owned by a developer. The rest case studies involved the owners of parcels of medium cost apartment in Selangor and townhouses apartment resorts in Negeri Sembilan. Both developments have received their Certificate of Fitness (CF) within 2001 to 2003 and confront with the same problems while processing the ST. The problems perceived are;

- buildings erected on lands being amalgamated
- caveat on the master title.
- Letter of concerns from the financier of each caveat

The age of the strata developments provides a good comparison with regard to any bylaw issues during the applications of ST

3.2 Information of case studies

3.2.1 Case Study 1: Selangor

Phase development involved 3 blocks of apartment. The CF issued within different timeframes, the details as mentioned in table 2.

Phase	Nos of Unit	Date of CF	Nos of Tenant refuse to pay outstanding bills
55A	220	31.05.2003	26

55B	240	06.06.2002	30
55C	240	25.06.2001	22
TOTAL	700		78

Table 2: Informations of case study 1
Source: project department of developer office, 2008

3.2.2 Case Study 2: Negeri Sembilan

Phase development involved 4 blocks of apartment. The CF issued within different timeframes, the details as mentioned in table 3.

Blocks	Nos of Unit	Date of CF	Nos of Tenant refuse to pay outstanding bills
I	24	08.09.2001	6
J	24	08.09.2001	9
K	36	02.04.2001	-
L	36	02.04.2001	8
TOTAL	120		23

Table 2: Informations of case study 2
Source: project department of developer office, 2008

Based on interviews with the Project Manager and Managing Agent of the two developments, the respondents then selected among tenants who have refused to accept the transference of ST on certain purposes. The respondents are among that are denied to pay outstanding bills (mortgage disbursement, stamp duty and maintenance fee). The selection made assuming the rest tenant who has resolve the outstanding bills are prepared and fully committed to accept the transference of ST.

Between May 2009 to June 2009, 101 questionnaires distributed to the selected tenant. Only 47 questionnaires/ from the tenants agree to answer. 5 of the tenants prefer to answer the questionnaire unassisted, while the rest are assisted. The collection of primary data was done by using a structured questionnaire. The questionnaire for this research consisted of a few different types of questions, namely open and closed questions. The large part of this questionnaire consisted of closed questions, where the respondent was asked a question and required to answer by choosing between a limited numbers of answers. The answers for some parts of the closed questions were based on Likert Scaling. The Likert scale chosen was range from 1 to 5, where 1 means 'not satisfactory at all', and 5 means 'most satisfactory'. Generally, the questionnaire designed for this study consisted of 7 parts. Part 1 covered basic owner's profile. Part 2 provided the information on understanding towards the Concept of ST, part 3 on maintenance fee, Part 4: mortgage disbursement, Part 5: Stamp duty disbursement, part 6: dissatisfaction on the service and maintenance and part 7 is the conclusion.

Data obtained from the feedback will be analyzed using Frequency Analysis and Relative Index. It is then written back in terms of Bar Chart, Column-Chart and Pie Chart to generate findings. The data will be converted into percentages to make more understandable. The results is then evaluated and used in the findings of objectives in the study. A brief summary was produced to conclude the outcome of the survey.

3.3 Frequency Analysis

Frequency Analysis depends on the percentage of respondents giving the same answers. It is also used to measure the degree of agreement for certain statements. The formula of Frequency Analysis is as below:

$$\text{Percentage (\%)} = (n/N) \times 100\%$$

Where:

n = Number of respondents

N = Total number of respondents received

3.4 Relative Index

To evaluate the ranking of different factors that cause the problems of issuances and transferences of Strata Title from the point of view from respondents, rating is made against the five-point scale described previously were combined and converted into relative important indices for each factor, adopting the Relative Index (RI) ranking technique. This determined the relative ranking of the different factors by comparing the individual value of the relative importance indices for each factor.

The highest ranking referred to the highest RI value. The individual numerical rating for each of the identified factors (from the Likert Scale) was transformed to relative factors, by using the following formula:

$$RI = \frac{n1(1) + n2(2) + n3(3) + n4(4) + n5(5)}{5N}$$

Where:

n1 = Number of respondents for “Strongly disagree”

n2 = Number of respondents for “Disagree”

n3 = Number of respondents for “Neutral”

n4 = Number of respondents for “Agree”

n5 = Number of respondents for “Strongly agree”

N = Total number of respondents

4 Results and Findings

4.1 Respondents Background

The questionnaires have accepted 44 respondents. The respondents then being categorized into races and the year they have tenured the parcels.

Race	Period of living in the parcels (Year)				Total
	1-2	3-4	5-6	>6	
Malay	0	6	20	6	32
Chinese	0	2	2	2	6
Indian	0	0	6	0	6
Others	0	0	0	0	0
Total	0	8	28	8	44

Table 4: Respondents Background

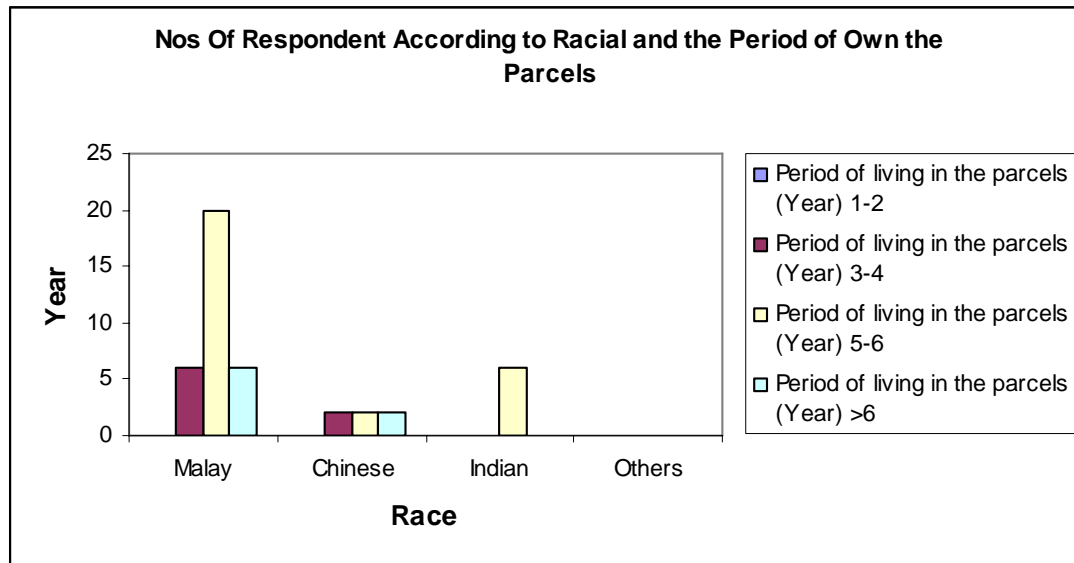


Figure 7: Respondents Background

The Malay owner is the highest numbers of respondent who have occupant the parcel for 5-6 years.

4.2 Information of HS

According to Table 5. Most of the respondent obtained the information about ST from the Sales and Hire Purchase documents (44%) once they purchased the parcels. The notification for the developer to forward the ST application as mentioned in Section 8 of the STA 1985 that developers must apply for strata titles for each individual project development within 6 months of receiving the Certificate of Compliance and Completion (CCC) (previously Certificate of Fitness for Occupation) or face a fine of not less than RM10, 000 or not more than RM100, 000 for any failure of forwarding the ST documents. What's more, the developer is also subject to a minimum fine of RM100 and a maximum fine of RM1, 000 for each day the offence continues.

Source of Information	Frequency	Percentage
Sales & Hire Purchase Documents	22	44%
Sales Agent	16	32%
Media	0	0%
Reading	2	4%
Authority Circulations	0	0%
Friends	4	8%
Experience	6	12%
Others	0	0%
TOTAL	50	100%

Table 5

Sources of Information on Strata Titles

This is followed by the information given by the Sales Agent (32%) and the respondent's own experience (12%)

For high rise residential buildings, the first encounter with the term 'service charges' is when the purchaser reads through the standard sale and purchase agreement. The provision of importance here is Section 16 Schedule H of the *Housing Developers (Control and Licensing) Act 1966, Regulation 1989* which reads as follows:

"The Purchaser shall be liable for the maintenance and management of the common property and for the services provided by the Vendor prior to the establishment of a management corporation under the Strata Title Act 1985."

Schedule H falls under the Standard Sales and Purchase Agreement. The service charges are paid to the vendor or developer. There is no explicit definition of service charges but when it is read in conjunction with other provisions of Schedule H it can be taken to mean the expenditure incurred in the maintenance and management of the common property. It also mentioned the term of disbursement of mortgage and stamp duty fee during the transference of ST. the tenant/purchaser are well informed that without paying the outstanding bills will lead them trouble to get the ST.

4.3 Problems features among Owner On Issuance and Transference of ST

Although the respondents are well-informed about the importance of ST, most of them found it hard to comply with the regulation of getting the ST as being mentioned earlier. Figure 4 unveiled majority of respondents (39%) feels that service and maintenance fee of their apartments were slightly high and it does not comply with the satisfaction of their service (23%). Anyway, the respondent found the disbursement of stamp duty (28%) and the outstanding bills of service and maintenance fee (22%) might also affect the issuance of strata title. Those matters should be resolved by respondents before the transference of ST.

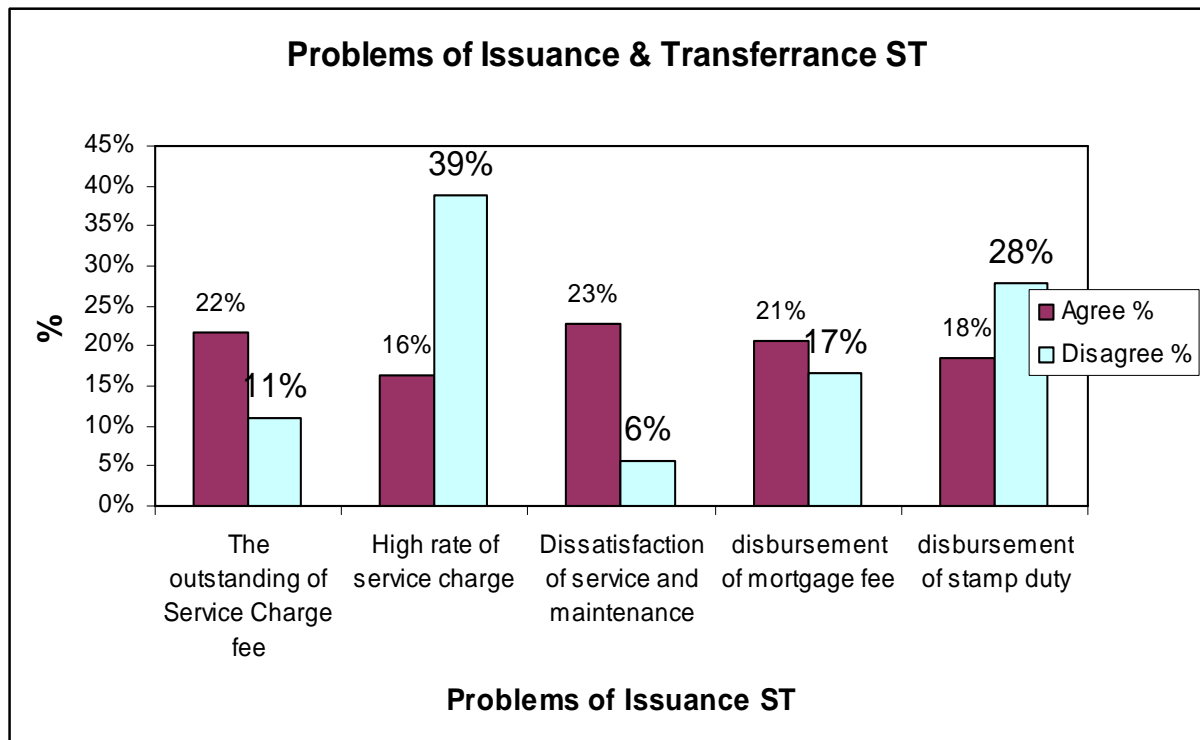


Figure 8
Problems of Issuance and Transference Strata Title

Service charge provisions are incorporated in tenancy agreements to ensure that the landlord's capital asset is being maintained at the tenant's expense. However, tenants often complain that certain services are not being provided or that the services are of a poor standard (Noor, 2007). The tenant always suspects that he is paying too much. The constituents of service charge will vary according to the type of building, type of usage, size, and term of tenancy or lease agreement as well as any explicit definitions in the agreements.

4.4 The Significance of Transference the ST

The most common problem associated with the transference of ST is the maintenance and service fee that run by the management corporation assigned by developer is the highest factors (0.73 Relative Index). Followed by the dissatisfaction on building services and maintenances that are run by the management corporations (0.68 relative Index). Besides, there are some residents who still have the outstanding bills of maintenance and service fee that should be settle down before the transference of ST (0.55 Relative Index). The summary of the problems and refusal of respondents to receive the ST can be viewed at table 4 below.

DESCRIPTION	Likert Skill					Frequency analysis		RI	Rank
	1	2	3	4	5	<3	>3		
	No of Respondent					%	%		
Outstanding maintenance and Service Fee	2	6	4	30	0	18%	68%	0.55	3
Maintenance and service fee too high	0	2	6	20	16	5%	82%	0.73	1
Dissatisfaction on building services and maintenances	0	6	6	10	22	14%	73%	0.68	2
Mortgage fee disbursement	2	8	14	16	4	23%	45%	0.38	4
Stamp duty disbursement	6	8	16	12	0	32%	27%	0.22	6
Unfamiliar with Strata Tittle	4	8	30	2	0	27%	5%	0.04	7
Developer to settle the Strata Tittle	0	8	22	14	0	18%	32%	0.25	5
note: Scale used : 1=Strongly Disagree, 2=Disagree, 3=Neutral, 4=Agree, 5=Strongly Agree									

Table 6
Problems of Issuance and Transference Strata Title

5 Conclusions

The main objectives of this research to determined the factors of the issuance and the transference of ST on the owner's perspectives. Taking into account of the above discussion, we found the owners understand the concept of ST but seems refused to accept the transference of ST based on a few factor namely the service and the maintenance fee are slightly high compared to the services offered by the Management Corporations. Besides, the owner refused to solve any outstanding bills on maintenance of their building while feel the mortgage and stamp duty disbursements are another factor of them to refuse the transference of ST. Based on these findings, several recommendations identified to reduce the problems of the issuance and transfer of the Strata Titles to the purchasers by providing transparent information, campaign and education regarding the importance and the process of issuances and transferences ST.

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