

NEWS

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Property management — The fact that matters

ENSURING QUALITY: Proposed amendment to Act 242 to further protect public interest

ACT 242 came into operation on February 4 1981. In order to improve the regularisation of the professional property management practice, the board formulated and implemented the Property Management Standards on June 1 2010.

Besides its clear and timely objective to safeguard the interest of the public from unscrupulous and illegal property managers, it is also to tighten the corporate governance legislative framework which gives the profession a code of conduct for which they are allowed to operate. The provisions regulate the professional ethics, and more importantly, the fiduciary duties and obligations of property managers.

While it follows that property managers are governed by the above guidelines, the rapid progress in the property and building industry has given birth to a breed of unlicensed property managers that has been taking the profession for granted.

Operating without any licence, it could safely be said that a majority of this group are also operating without any background, skill or experience in the field. This in turn has created a lot of problems to home owners.

On a regular basis, we would read or watch on the local news, incidents of misconduct or sheer negligence on the part of unlicensed property managers who have failed to perform their duties, and the affected home owners are left with no recourse on liability.

The proposed amendment is set to rectify this problem — to further protect public interest, particularly its physical and financial well-being.

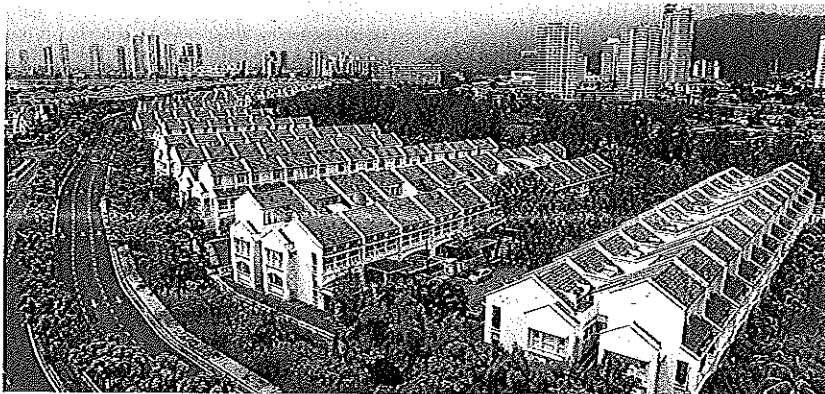
But first, let's answer these basic questions: Who are these property managers, what do they really do and why someone who is regulated, insured and trained would be most ideal for the job?

Professional property management practice is a specialised profession involving specialised training, knowledge and skills on subjects which include, but not limited to, building maintenance, facilities and services management, financial management, property laws and insurance management.

Every professional in property management practice for a fee must hold a professional degree in property management or real estate management and must be duly registered by the board.

Valuers, who are trained in the art and science of property management which incorporates valuation, land economics and other skills, are first and foremost, qualified property managers having obtained their degree in estate management or property management.

After obtaining these degrees, registrants will have to undergo two years of training and pass a Test of Professional Competence. Continuous professional development of 10 hours per annum must be exhausted in order to remain registered which also makes them eligible for Professional Indemnity Insurance.



Good property managers are expected to manage properties under their portfolio as if it were their own, paying a great deal of attention to every management detail, not limited to just the physical asset. Bloomberg pic

Act 242

THIS YEAR marks the 31st year since the government introduced the Valuers, Appraisers & Estate Agents Act, 1981 (Act 242).

It provides legislative regulatory control by the Board of Valuers, Appraisers & Estate Agents Malaysia (the board) on a property manager, be it a person, firm or company, who is carrying out property management services for a fee.

However, with the proposal to amend Act 242, there has been rather disturbing misconceptions about the intention of this initiative.

Ishak Ismail, president of Malaysian Institute of Professional Property Managers (MIPPM), explains the current scenario and how the proposed law amendment hopes to change the status quo for the better.

Anyone who fulfills the above requirements is rendered fit to offer services relating to real estate which include property management, estate agency, consultancy and valuation.

The proposed amendments to Act 242, among others, provides the proposed opening of a Register of Property Managers under the Act, to encourage all unlicensed property managers, under certain criteria, to register with the board ensuring proper control.

Whether they are named managing agents, building managers or valuers, if they are offering the services of a property manager for a fee, they must be registered.

The question of "monopoly" and that "the opening of the Register is inconsistent with Competition Act 2010" should never have been raised here.

As in every professional career that requires the knowledge of a core discipline and the need to be registered for professional practice, such as architects, engineers, doctors or lawyers, it is this same spirit that is put forward by the Initiative to amend Act 242.

Would you also say that the law which requires all lawyers to be registered and licensed has created a monopoly in the profession among licensed lawyers?

If you would not risk your life on an unlicensed lawyer (or any other professionals who are in charge to safeguard and protect the public's well being), why would you risk your life on an unlicensed property manager?

It is very important to note that registered property managers who are found to be negligent are subject to disciplinary actions under the Act and may even face disbarment from practising — which will make the licensed property managers more responsible, failing which they might be in danger of losing their licence and will eventually be out of business.

They can also be expected to comply with all the laws attached to the profession, as well as their fiduciary duties, such as providing audited accounts for public viewing which is one of home owner's basic rights.

Having said that, it is to be emphasised that building owners have all the right to manage their own

properties, and joint management bodies (JMBs), management corporations (MCs) and shopping centre owners can manage their own buildings or hire a registered property manager of their choice.

The Act only applies to those who practise property management and offer services as a property manager for a fee.

Another misconception is that the fee involved in appointing a licensed property manager is expensive.

Contrary to what was said, the minimum management fee payable to a registered property manager is in fact, RM50 per holding per month, and not per unit. This has been clearly defined in the Local Government Act for subdivided buildings as "the Common Property and any parcel thereof" — which clearly provides that the minimum fee is RM50 per common property.

To say that the management fee is RM50 per unit is not only wrong, but disregarding the fact that property managers are not managing individual strata units, but only the common property.

It is a fact that property managers not registered under the Act will face difficulty obtaining indemnity insurance cover. Even if they do obtain it, if something goes wrong and a claim is filed, the insurance company may deny compensation on the grounds that the property managers are not legitimate, simply because they are not registered with the board.

The importance of an indemnity cover cannot be stressed enough. The basic terms and conditions of a Management Agreement between a JMB or MC and the property manager must provide indemnity cover because the two parties will eventually be exposed to risk if the com-

panies or people they entrust their duties to are negligent or reckless in performing their duties.

Taking the coverage will also be of comfort to the Individual property manager as they will not have to suffer in their personal capacities in the event that they are sued for something outside their control. In this, the benefit works for both home owners and the licensed property managers themselves.

From as early as 1971, the government has introduced property management courses in local universities and ever since then, there has been at least seven public universities and two private universities that provide the course of estate or property management.

In 2010, over 420 graduates in property management were recorded to be released into the industry annually, not counting undergraduates from various overseas universities that are recognised by the board. This proves that there can never be a shortage of property managers in the market.

What makes registration even more important is that it demands for the standard and integrity of the profession to constantly be well protected. In turn, it will ensure that the industry, in the future, will be made of competent professionals who hold their responsibilities in high regard.

The task of a property manager is not simply "administrative" in nature. It requires clear judgment, immediate reactions to complaints, good communication skill, trustworthiness, ethics and a lot of other skills, values and competencies which comes with education, training and experience.

Good property managers are expected to manage properties under their portfolio as if it were their own, paying a great deal of attention to every management detail, not limited to just the physical asset.

In no way is the proposed amendment denying the fact that there are unlicensed managing agents out there who are absolutely competent and capable of performing their duties.

What the board is submitting is that, one may continue to practise as a professional property manager as long as one is registered under the Act, so that their duties in managing their strata estates can be made clearer — ensuring the quality and professionalism of services rendered to the public at large is maintained at the highest level.

In short, they act individually as an independent party to ensure corporate governance, transparency and protection of the public.