



Gated and guarded communities (Part 2)

by **Derek Fernandez**

PRIOR to the amendment to the Strata Titles Act 1985, the legal basis for the creation of a gated and guarded community (GACOS) scheme was grounded on a set of agreements between the developer and the purchasers in relation to their respective rights and obligations for the management and use of the areas in the development. Hence a developer would apply for subdivision of land into lots and subject to planning approval being obtained for the GACOS scheme, enter into a set of agreements and covenants to regulate the use of land in the scheme and, in particular, the land which would normally be public land or land to be surrendered to the authorities if it were not a GACOS scheme.

The problem with this was that many of these agreements, often referred to as Deeds of Mutual Covenants (DMC), were not enforceable against sub-purchasers once the separate issue documents of title were issued unless the developers were very careful in ensuring that the DMC was made to "run with the land". The general view is that the DMC is merely a contract between the developer and the purchaser, and cannot be binding on and enforced against a sub-purchaser, unless he consented to it.

The consent of a sub-purchaser can easily be done in a case where the

developer's consent is required for the sub-sale. However, once a separate individual title is issued and transferred to the first purchaser, the developer's consent will no longer be required and it is common for some purchasers in GACOS scheme to sell their property to sub-purchasers without getting the sub-purchasers to agree to sign a DMC with the developer or the person managing the GACOS scheme. Although the first purchaser shall contractually remain responsible to the developer if the sub-purchaser did not pay, for example, his security charges, this will be of little use in a case where the first purchaser has long gone, and the sub-purchaser is occupying the property.

One measure that could have been implemented by developers of a GACOS scheme prior to the amendment of the Strata Titles Act 1985, was to register the DMC as an easement under Section 282 of the National Land Code 1965, and upon registration the easement could then be enforced against any subsequent purchaser. The definition of easement under Section 282 of the National Land Code 1965 is wide enough to cover the DMC. Alternatively, the developer could have sought the state authority's permission to impose a condition or restriction in interest on the land to incorporate the DMC.

Thus, it is not surprising that many

GACOS schemes have got themselves into problems with some sub-purchasers who refuse to pay the dues, but yet enjoy the facilities paid for by others. Of course, in some cases these sub-purchasers did have good reasons for not paying.

Planning requirements

Currently, a developer may elect to proceed with subdivision of land under the National Land Code 1965, or subdivision of land into land parcels to be held under strata titles, under the Strata Titles Act 1985. Even if a developer chooses to subdivide the land under the Strata titles Act 1985, it does not necessarily mean that the developer can develop a GACOS scheme. Planning law requirements as well as the State Authority have set out strict guidelines for approving GACOS. These guidelines also take into account socio-economic factors in determining whether to allow GACOS. Some of the matters addressed by the guidelines (in the case of Selangor) are as follows:-

- (i) Application is made only by the land owner / developer;
- (ii) The maximum area allowed for each "parcel" for "gated community" should not exceed 20 acres;
- (iii) Type of development, number of units, building set-back and densities are regulated;
- (iv) Roads in the housing scheme are not connected with the adjoining areas at the time the application is made or in the future;
- (v) Facilities and open spaces to be provided are generally more onerous than normal development;
- (vi) Facilities outside GACOS area are to be also provided by the developer;
- (vii) Construction of guard house without barrier is permitted. The location should not obstruct the traffic (situated at road shoulder only);
- (viii) The location and design of the guard house must be shown in the plan when the Planning Approval is being made;

- (ix) The fencing height is regulated;
- (x) Road reserves, street lights, drains, rivers, pavements, playground and vacant area remain as public reserved area. Developer can maintain the facilities based on agreement entered with the Local Authority;
- (xi) Local Authority and other utility companies are free to conduct their maintenance work in the guarded area; and
- (xii) Developer to propose detailed information with regards to the concept of 'Gated Community' development in:-
 - a) Disclosure statement; and
 - b) Deed of Mutual Covenants (minimum requirements must be incorporated as set out by the authority);
- (xiii) Where developer wants local authority to provide some of the services then an agreement containing prescribed terms is to be included in the maintenance agreement between the local authority and the developer. These prescribed terms include a security bond.

Finally, it must be understood and appreciated that all purchasers of houses in a GACOS will have to pay considerably higher charges for the maintenance, sinking fund, security fees, electricity and water and other services because the cost of all facilities within the boundary of GACOS will have to be borne by them in addition to the usual quit rent and rates levied.

Part 1 of this article appeared last Friday. The writer is a member of the Conveyancing Practice Committee, Bar Council, Malaysia www.malaysianbar.org.my.

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foreign briefs



James Cameron's Malibu Ranch for US\$25 million

Three-time Academy Award winning director James Cameron is selling his Malibu ranch, Tranquility Base, for US\$24.95 million (RM87.3 million). The seven separate land parcels, totalling 729 acres, are nestled in the foothills of the Santa Monica Mountains with panoramic views of the Malibu coastline and Santa Monica Bay. CB Richard Ellis is handling the sale.

Rightmove partners with Vodafone

Rightmove, the UK's No 1 property website, has launched a new mobile version of its site accessible to all networks and handsets which enable mobile Internet browsing. The company has partnered with Vodafone to offer the new service and built an advanced "find me" facility available only to Vodafone subscribers. This function pinpoints the user's current location using satellite technology and lists all available property in the area.

Playboy in Macau

Playboy Enterprises will open a 40,000 sq ft entertainment complex in Macau in late 2009. Playboy Mansion Macau, part of the vast Macau Studio City, will include gaming facilities complete with female "bunny" dealers, dining, entertainment and retail stores. Its gaming operations will be run by casino operator Melco International Development. — *The Edge Singapore*

Goings on

Visit **ARCHIDEX07**, the eighth architecture, interior design and building exhibition jointly organised by **Pertubuhan Akitok Malaysia (PAM)** and **CIS Network Sdn Bhd**, from today till the end of the week at the Kuala Lumpur Convention Centre from 11am to 7pm. Call 03-7982 4668 for details.

Property Auction House Sdn Bhd is organising a **property auction** today at 3pm at The Auction Room No 1-3, 1st Floor, Jalan Ampang, Kuala Lumpur. For details, call 03-2070 2226 or visit www.auctions.com.my.

G. Institute of Real Estate Sdn Bhd is organising a **seminar on the latest development in**

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housing law on July 14. The seminar will be held at the institute's head office in Phileo Damansara 2 Business Centre, 15, Jalan 16/11, off Jalan Damansara, Petaling Jaya. For details, call 03-7660 1682.