



# Gated and guarded communities (Part I)

by **Derek Fernandez**

**GATED** and guarded community ('GACOS') housing schemes are getting more popular. In some areas, residents have even taken to restricting access to public roads, providing guard posts to try to reduce crime. In other cases, developers see profit in selling exclusivity and security by GACOS and readily exhort the virtues of a gated and guarded community lifestyle in their glossy advertising. Whatever the social impact of GACOS, this trend is on the rise and there is a growing market for it.

For our purposes, a reference to GACOS or gated communities means the particular development, its facilities and services including the infrastructure (roads, drains, etc) within the development are privately managed and owned. Usually some form of physical barrier surrounds the boundaries to the development. Essentially, it is a "privatisation" of public spaces or spaces that would normally be managed by public authorities. By contrast, guarded communities refer to communities where residents employ private security to provide security services to an area which includes public spaces. This often involves an attempt to restrict or regulate public spaces privately. This would include the erection of barriers on public roads, guardhouses, etc.

We will now examine the legality of these schemes:-

## Guarded Communities

It is unlawful to privately attempt to restrict or regulate public spaces without the approval of the relevant authority. In the case of an attempt to close, barricade or restrict the access of a public road, drain or space, there may be a contravention of Sections 46 (1) of Street Drainage and Building Act 1974, Section 80 of the Road Transport Act 1987 and Section(s) 62 and 156 of the National Land Code 1965. In addition, provisions of the Town and Country Planning Act 1976 may also be violated where guard houses are built in the public land or road shoulders. For example, Section 46 (1) of the Street Drainage and Building Act 1974 provides that any person who:-

- a. builds, erects, set up to maintain or permit to be built, erected or set up or maintained any wall, fence, rail, or any accumulation of any substance, or other obstruction, in any public place;
- b. without the prior written permission of the local authority, covers over or obstructs any open drain or aqueduct along the side of any street;

shall be guilty of causing an obstruction and may be arrested without warrant by any police officer or any officer of the local authority authorised in writing in that behalf by local authority and taken before a Magistrate's Court and shall be liable on conviction to a fine not exceeding RM500, and in the case of a second or subsequent conviction to a fine not exceeding RM1,000.

There is no problem with private security patrolling public roads in a housing scheme under the employment of the residents' associations. Nevertheless, the local authority and the relevant OCPD should be consulted first. It has to be noted that erecting structures to restrict access to public roads or guardhouses is another matter and would violate the law unless the relevant authority gives its approval to do so.

In recognition of a growing problem of security, various local authorities and state governments have issued guidelines for guarded communities. These guidelines do allow erection of guard houses and the employment of private security based on 85% consent by the residents in the area affected. For example, in Selangor, the Selangor Housing and Property Board and the local authorities allow guard houses to be built on the following guidelines:-

- i. Applications made through Resident Association (RA) only;
- ii. Consent by 85% of the residents;
- iii. Agreement must be made between RA and Local Authority;
- iv. Guard house without barrier are allowed and the location should not obstruct traffic (situated at road shoulder only);
- v. The size of the guard house should not exceed 6ft x 8ft or other sizes that the Local Authority thinks fit and suitable;
- vi. The location and design of the guard house must be approved by the Local Authority;
- vii. A written consent from Local Authority and Land Administrator (LA) for the construction of guard house on reserved road/vacant land must first be obtained;
- viii. Appointed security guards must be registered with Ministry of Home Affairs or with other relevant agencies;
- ix. Not to prevent/obstruct passing vehicles from entering the guarded area; and

- x. LA and other utility companies are free to conduct their maintenance work in the guarded area.

The authorities do sometimes "turn a blind eye" to allow some form of limited barriers as long as they do not deny access nor unduly obstruct traffic and have the overwhelming support of local residents.

## Gated Communities

The recent amendments to the Strata Titles Act 1985 (with effect from April 12, 2007) by the Strata Titles (Amendment) Act 2007 now allows a GACOS to be statutorily created and regulated more effectively like other types of strata schemes. As such, land parcels with buildings are now governed by the Strata Titles Act, in the same way as a high-rise building, if a developer chooses to do so. This means that for the purposes of the Strata Titles Act 1985, land parcels with buildings can in certain circumstances be treated like a multi-storey building lying down on its side. There are several important qualifications though.

The effect of section 5(h) of the Strata Titles (Amendment) Act 2007, is that only buildings of not more than four storeys may be erected on the land parcels intended to be subdivided and held under separate strata titles, or an accessory parcel.

Furthermore, any Deed of Mutual Covenants entered into between the developer and a purchaser of a parcel in a GACOS scheme agreement can be now easily enforced as bylaws under the Strata Titles Act 1985.

The enforcement and management can now also be carried out under the Building and Common Property (Maintenance and Management) Act 2007, when the Management Corporation has not come into existence. This is a huge step forward from the past practice which was problematic to say the least.

*Part 2 of this article will appear next week.*

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WALL-MOUNTED COCKROACH

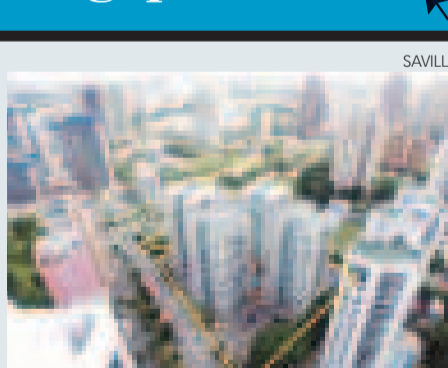
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## Singapore Briefs



### SAVILLS

#### \$S1 billion wanted for Pacific Mansions

Savills has launched Pacific Mansions for collective sale by tender with an indicative price of \$S1.18 billion (RM2.7 billion), or \$S2,400 psf/ppr. The 45-year-old residential development is on 128,306 sq ft of land — one of the largest freehold District 9 sites to be offered for sale this year — at 8 River Valley Close. Approval has been granted to redevelop the site up to a permissible gross floor area (GFA) of 493,223 sq ft, exceeding the existing plot ratio of 2.8. The site could yield 130 apartments on 36 storeys, averaging 3,800 sq ft each. The tender is expected to close at 3pm on July 26.

### Luxurious The Marq averages \$S4,000 psf

Apartments at SC Global's first phase release of ultra luxurious residential development The Marq on Paterson Hill have been priced from \$S12 million to \$S30 million, or an average \$S4,000 psf. About one-third of the apartments are being released by invitation only. The development, on 124,000 sq ft of freehold land at the top of Paterson Hill, will have two 24-storey towers: Signature Tower and Premier Tower. Signature will have 21 five-bedroom units averaging 6,195 sq ft each. Premier has 42 four-bedroom apartments averaging 3,000 sq ft each.

### SC Global pays \$S262 mil for The Ardmore

SC Global has paid \$S262 million for prime freehold site The Ardmore at 6 Ardmore Park, a stone's throw from Orchard Road. The purchase, inclusive of an estimated \$S16.6 million development charge to use the site's full 2.8 plot ratio, translates to \$S2,338 psf/ppr. The tender for the collective purchase closed on June 12 with six established property developers submitting close bids.

The 42,565 sq ft site has 24 apartments and is zoned residential. It can be redeveloped into a 36-storey luxury condominium with a GFA of 119,181 sq ft — perhaps 33 units averaging 4,000 sq ft each. SC Global has spent \$S1 billion to acquire one million sq ft of developable area in the Orchard Road area. — *TheEdge Singapore*