

What is "sinking fund"?

Both Section 46 of the Strata Titles Act, 1985 and Schedule H of the Housing Developers (Control and Licensing) Regulations 1989 (amended in 2002) stipulate that the sinking fund (called "special fund") in the Strata Titles Act) be used to meet major liabilities of the strata estate.

Some developers collect this fund by way of governing documents, such as a Deed of Mutual Covenants, prior to the establishment of a management corporation for the development, while others rely on the provisions of the Schedule H.

Unit owners in a strata title development must contribute to this sinking fund, which is kept as a reserve fund to meet major replacement of parts of the common property.
The collection of the sinking fund should not be confused with service charges, which are meant for the general maintenance and management of the common property and for the other services the developer has agreed to provide.

As a building ages, parts need to be replaced and without a sinking fund, it will deteriorate. It is easy to understand this if you compare it with the maintenance of a car. Spending on regular maintenance such as changing the engine oil, filter and spark plugs, is akin to paying the monthly maintenance charge of the condo.

However, as car owners know, they will also need a reserve fund to replace parts as the car gets older and for unplanned occurances such as new tyres, a broken windshield, or even repaint.

Permitted uses of the fund

Both the Strata Titles Act and Schedule H require that a sinking fund be set up for:

1. Painting or repainting any part of the common property, which is a building or other structure;
2. Acquisition of any movable property for use in relation with the common property;
3. Renewal or replacement of any fixtures of fittings in any common property and any movable property vested in the body corporate; and
4. Any other expenditure, not being expenditure incurred under subsection 5 or section 43, to meet a liability for maintenance or for settling any defaults in payment by a proprietor (Section 43(5) empowers a management corporation to recover monies due to it for work, repairs or any act done on behalf of parcel owners through court action.)

What is inadequate?

Unfortunately, current legislation do not provide much guidance on the collection and use of the

sinking fund, and unfair practices as well as unintended results are emerging, as seen from the frequent grouses of strata property owners.

The HBA believes that we must be guided by its intent; that we must pursue equity and fairness and that the best way to achieve the objectives of a sinking fund is through transparent management and accountability to the people contributing to the fund.

Developers who are managing property pending the issuance of strata titles should start the ball rolling by having regular meetings with the buyers.

With use and age, major items or fittings in a building will deteriorate and need to be replaced. Owners expect their management corporation to fulfill its obligations to replace worn or obsolete items. This will ensure that the aesthetic qualities of the development are maintained, thereby also enhancing property value.

In some instances, owners of strata title property may desire a better security system than the one originally provided by the developer. Such a move would mean additional expenditure, which unit owners would have to pay for, either through a special assessment or from the sinking fund.

If there is no trust that the sinking fund has been correctly used, then it would be nearly impossible to get owners to contribute more. Similarly, if a condo or apartment block requires a fresh coat of paint, tenders should be invited and owners should be consulted and their consent obtained.

Sinking fund study

As the amount appropriate for a sinking fund is often difficult to establish, the first party to manage the strata property should project the cost of repairs that could be expected in say, the first five to 25 years.

A detailed study of all the common property, an estimate of the life of each asset and the cost and timing of replacement should be prepared and presented to unit owners. If the building is to be repainted every five years, what would the projected cost be? This study has be a long-term one and needs to be reviewed, updated and revised annually.

Role of owners

If there has been no information about the sinking fund nor any plans made for its utilisation, it's about time the unit owners get-in-the-know.

Strata title owners should play an active role, right from the time they receive vacant possession of their units, by forming pro-tem committees or residents' associations, while those intending to buy a unit in an older strata estate should demand to see the sinking fund and plans.

Misappropriation of fund

Clause 20 of Schedule H stipulates that the money accumulated in the sinking fund is to be held by the vendor in trust for all purchasers until a management corporation for the property is established. The vendor or his agent shall be obliged to provide purchasers with a copy of the annual audited accounts for services paid for with this fund.

The sinking fund is, in fact, a trust fund that is entrusted to a trustee, who plays the role of "stakeholder". If the fund is not used for a reasonable period of time, it should be placed in an interest-bearing account, such as a fixed deposit with an established bank or financial institution.

Stakeholders who unilaterally dig into the fund without proper authorisation should be held responsible and accountable. This fund should at all times be transparent to all parties that contribute into it. Misappropriation of the fund is tantamount to criminal breach of trust, which is a crime punishable by imprisonment.

It would make things clearer if the Ministry of Housing and Local Government comes up with a directive to all strata estate developers and managers of properties sold before Schedule H was revised in 2002 to comply with the new provisions. Complaint Handling Manager Pusat Khidmat Aduan Pengguna Nasional
National Consumer Complaints Centre