

## Clearing the Air: Debunking Legal Misconceptions of Private Lease Schemes

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### Abstract

The scarcity of land has led landowners to prioritise maintaining their ownership, which can impede the construction of high-rise buildings for housing. However, this situation has presented an opportunity to implement the strata lease scheme. Under this scheme, each strata title is registered with a lease, and buyers are granted the right to possess the purchased strata parcel for a 99-year lease term rather than being registered as proprietors. Despite concerns from the public about the lack of property proprietorship and insufficient protection for buyers under current legislation, this paper aims to review whether Malaysian legislation can answer public concerns in strata lease scheme projects. Qualitative research approaches, including case studies, will be used to examine legal issues from a societal perspective and evaluate the effectiveness of legal institutions in meeting societal demands. The objectives are to identify the legal problems related to the development of strata lease schemes, sometimes called the private lease scheme, and to address these issues. This study challenges negative public perceptions of some strata lease scheme projects. The findings reveal that Malaysian statutes can address the legal issues, and learning from more experienced strata lease scheme projects may help ease the worries over the public's interpretation of private lease schemes.

**Keywords:** Private Lease Scheme, Strata Lease Scheme, Strata Title, House Buyer Rights, Malaysia Law

### Introduction

The study by Zainal et al (2023) explained the definition of a strata scheme, where a strata scheme refers to a scheme of buildings subdivided into individual parcels, each with its accessory parcels. Every occupant of these parcels shares the common properties with others, and each parcel has its own strata title. To create a strata lease scheme, all strata titles in the strata scheme must be registered with a lease. This means that no transfer of ownership of the title can happen. Zainal et al (2023) have pointed out that the term "strata lease scheme" does not have a precise definition as it has not been formally defined in any laws. However, different studies, including Abu Bakar et al (2021); Mohsin et al (2020); Zainuddin et al (2021), approach the term in various ways. Abu Bakar et al (2021) describe it as a "private lease

scheme," whereas Mohsin et al (2020); Zainuddin et al (2021) refer to it as a "strata private lease scheme". Zainal et al (2022b) only utilise the term "strata lease scheme," which refers to a registered lease on all strata titles within a strata scheme.

Developing a strata scheme through a project utilising the private lease scheme concept was widely discussed between 2018 and 2021. Numerous online news reports highlighted public concerns regarding implementing the private lease concept in Medini, Johor. According to Zainal et al (2022a), the strata lease scheme development in Medini, Johore, is often called the private lease scheme by the public. The Malaysia House Buyer Association (HBA) frequently used the term private lease scheme to explain the projects in Medini, Johor. According to Zainal et al (2022a), the development strata scheme in Medini is a concept of applying registered leases onto strata titles, which were identical to the strata lease scheme in Penang, based on the same legislation framework. However, what may seem confusing to many is thinking that the Medini lease scheme development was adopting a new concept that requires vast amendment of current law to insert the private lease scheme concept, which was not true (Zainal et al., 2022b). Zainal et al (2022b) noted that Malaysia has only three active projects utilising the principles of the strata lease scheme: the Waqf strata scheme, the Khoo Kongsi lease scheme in Penang and the Medini lease scheme in Johor. Notably, these strata lease schemes are established and regulated under the Malaysian legal framework without any adjustment to the law.

Although Medini is experiencing continued growth and development, there are concerns among the public about the private lease scheme. This topic has been extensively discussed and shared on various online media platforms. It has even motivated local scholars to conduct multiple studies to better grasp the underlying issues of the private lease scheme concept. Among the most significant issues was the buyers' rights in a private lease scheme. When a buyer is registered as a lessee on the strata title, they do not have any ownership rights. During the lease term, the lessee only has the interest of a registered lease (Mohsin et al., 2020). According to Chang (2020a); Chang (2020b), purchasing a unit under the lease scheme is not a perpetuity but only a form of temporary possession.

The National Land Code [Act 828] states that a land proprietor has ownership rights, while a registered lease makes the proprietor a lessor. Within the lease term, a lessee has only the right of possession due to the lease interest. According to Chang's (2020a) opinions, possession is not equivalent to proprietorship, while the National Land Code [Act 828] does not safeguard the buyer of a leased unit.

The House Buyer Association (2021) has stated that the rights of parcel buyers might have been undermined due to the limitations of the legislation in the Strata Titles Act 1985 and Strata Management Act 2013. This is because parcel buyers buy an interest in the property and are not recognised as proprietors. The Strata Titles Act 1985 and Strata Management Act 2013 only define the proprietor's right to the parcel and do not address the lessee's rights to this parcel (House Buyer Association, 2021). In 2003, Teoh conducted a study highlighting issues arising from the Strata Titles Act 1985's insufficient provisions. Teoh recommended reviewing the legislation for greater flexibility in strata scheme development and to promote innovative approaches, leading to improved housing quality and value.

Another issue that arose is that the Strata Management Act 2013 has no designated legal provision governing the lessee's role in forming Management Corporations, as per the research conducted by (Zainuddin et al., 2022). In another study by Abu Bakar et al (2021), it was suggested that the Strata Management Act of 2013 should consider including the term "lessee" to enable buyers to establish a Management Corporation. Zainuddin et al.'s (2022)

study revealed, based on the comments from an appointed property manager in one of the Medini lease scheme developments, that the actual management process is unclear under current law, which highlights the need for appropriate legislation to address issues related to managing lease schemes.

The decision made by the sole proprietor of strata titles is recognised as equivalent to the decision made by the Management Corporation, according to the Strata Management Act 2013 (Zainal et al., 2023). It is not permissible for buyers to create a management committee among the parcel buyers or lessees of strata titles. The Strata Management Act 2013 only acknowledges the sole proprietor of the strata title as the Management Committee (Zainal et al., 2023).

The findings of Abu Bakar et al (2021); Mohsin et al (2020) suggest that the lease schemes in Medini may require certain amendments to current Acts to expand ownership rights to buyers of strata lease schemes. However, changing the Acts would require intervening in the current land leasing registration on strata titles, which are currently recognised and accepted under the provisions of the National Land Code [Act 828]. Abu Bakar et al (2021) have proposed an amendment to the Housing Development (Control & Licensing) Act 1966. This is because the standard form of a sale and purchase agreement for residential in Schedule H of the Act is limited to regular strata scheme projects. According to the Schedule, the developer, as the land proprietor, must transfer the proprietorship to the strata residential buyers upon issuing the strata title. The suggested amendment would include a new Schedule in the Act that permits the selling and buying of strata lease units and the transferring of the purchased lease to the buyers.

Another issue to consider is the economic value of the strata lease unit. According to Chang (2020a); Chang (2020d), the value of strata lease units is expected to decrease rapidly. The strata lease property may be worth nothing once the lease term ends. National House Buyer Association (2021) predicts that the value of strata lease units will decrease, making it challenging to sell them to a subsequent buyer as the lease term shortens. It may also be challenging to get total financing from the bank (Othman et al., 2020a). On top of this, the landlord can charge extra fees to ensure the strata unit is returned in good condition when the lease ends (Chang, 2020c). Buyers cannot own a strata lease unit, so when the lease ends, the future descendants must return the property to the original owner. The descendant cannot inherit the lease property from their ancestor (The Edgemarket, 2018; Property Hunter, 2020).

Moreover, it is concerning if developers do not adequately inform buyers when purchasing a leased unit (Othman et al., 2020b; Chang, 2020a). The buyer pays the lease price, which is the property's value (Chang, 2020c). Developers may significantly increase maintenance charges throughout the lease period (Chang, 2020b). Once the lease ends, the strata unit reverts to the original owner (Chang, 2020b). Buyers have no security and lose the property, as there is no guarantee that the lessor will renew the lease term (Chang, 2020a; Chang, 2020c). The lessor's leniency may determine whether the lease is extended (Edge Prop, 2018; Pavither, 2018).

After considering the feedback from writers and scholars, it was determined that the private lease scheme is a significant area of concern. As a result, this study endeavours to identify the issues related to private lease schemes and methodically address them by examining the current legislative framework. Furthermore, this study will draw from actual strata lease scheme cases in Penang, which have existed for over 30 years, to offer potential solutions.

**Methodology**

The research methodology employed in this study is qualitative, utilising several distinct approaches to gather data. The study first explores public concerns regarding the legal status of private lease scheme buyers in Johore. Data was collected through a library study of online news and articles published between 2018 and 2021 to identify legal issues relating to a private lease scheme. Secondly, the qualitative research approach investigates how effectively legal institutions meet societal needs and how the law has been applied and enforced in case studies of strata lease schemes in Penang. During the case study review, a select group of respondents are interviewed to provide insight into potential solutions for issues related to Penang's strata lease scheme projects. In addition to the case study method, the research incorporates a library review to explore the scholarly work on the laws governing Malaysian strata lease schemes.

**Findings**

These findings tabulated in Table 1 were analysed from the library review made based on online news and academic articles by (Abu Bakar et al., 2021; Chang, 2020a; Chang, 2020b; Chang, 2020c; Chang, 2020d; EdgeProp, 2018; The Edge Market, 2018; House Buyer Association, 2018; Pavither, 2018; Property Hunter, 2020; Mohsin et al., 2021; Othman et al., 2020a; Othman et al., 2020b; Zainal et al., 2023; Zamri, 2019; Zainuddin et al., 2022). The themes were identified to summarise the issues these writers and scholars highlighted.

Table 1  
*The Issues of Private Lease Scheme*

| Themes                                  | Issues   |
|---|--|
| Lessor Dominating All Sides of Contract | <ul style="list-style-type: none"> <li>• Once the lease terms expire, the lessee will have no right of registered interest on the strata parcel that the lessor will fully own.</li> <li>• The lessor may decide to review a new term and value of the lease, to the lessee, upon the expiring lease term.</li> <li>• Private lease scheme buyers need to put forward the lease consideration, which is the property's price. The lessor may impose additional charges or a deposit to ensure the property is in good condition when surrendering at the end of the lease term.</li> <li>• Developers who are landowners may see the private lease scheme concept as a fixed cash cow where they can increase exponentially maintenance charges over the lease period.</li> <li>• The extension of lease term on the leniency of the lessor</li> </ul> |
| Rights of Possession                    | <ul style="list-style-type: none"> <li>• Buyers are not informed that they are not buying but instead leasing the property from the developer.</li> <li>• Buyers of private lease scheme do not have ownership rights.</li> </ul>  |

|                                  |  |
|----------------------------------|--|
|                                  | <ul style="list-style-type: none"> <li>• Future descendent of the buyers must return the property to the landowner upon expiring the lease. A descendent is not able to inherit the property from his ancestor.</li> <li>• Private lease scheme is a contract between the lessor and lessee favourable to the private sector. It has no guarantee of lease renewal; therefore, a private lease scheme buyer will lose the property upon the expiring lease term.</li> <li>• A lessee only has the right of possession due to the lease interest within a lease term.</li> <li>• Require several amendments to current acts to expand certain ownership rights to strata lease scheme buyers.</li> </ul>  |
| <p>Limitation of Current Law</p> | <ul style="list-style-type: none"> <li>• The National Land Code [Act 828] does not protect the buyers of private lease schemes.</li> <li>• No provisions specifically to explain on development of strata lease scheme or private lease scheme.</li> <li>• Limitation of the Strata Titles Act 1985 and Strata Management Act 2013 may have suppressed the right of parcel buyers as they are buying interest in the property and are not acknowledged as a proprietor.</li> <li>• Strata Titles Act 1985 and Strata Management Act 2013 only define the proprietor's right to parcel and never address the functionality of a lessee to this parcel.</li> <li>• Problems raised because of the inadequacy of the provisions in the Strata Titles Act 1985.</li> <li>• No specific legislation to regulate and administrate a strata lease scheme, therefore it will involve references to many legislations to understand this scheme.</li> <li>• Strata Management Act 2013 should include the term lessee to allow buyers to form the Management Corporation.</li> <li>• The need to amendment in Housing Development (Control &amp; Licensing) Act 1966 to incorporate a new Schedule for selling &amp; buying of private lease scheme.</li> </ul> |

|                               |   |
|-------------------------------|---|
|                               | <ul style="list-style-type: none"> <li>• Introducing a Certificate of Lease in the National Land Code [Act 828] and the Strata Titles Act 1985.</li> </ul>  |
| Decreasing in Property Values | <ul style="list-style-type: none"> <li>• Private lease scheme property’s value depreciates rapidly, and the value becomes zero at the end term of the lease.</li> <li>• Property of private lease schemes is not easy to resell due to the depreciation of its value as the lease term lessens. The bank may hesitate to give out full financing.</li> </ul>  |
| Buyers Were Deceived          | <ul style="list-style-type: none"> <li>• Buyers are not explained about lease property. They are unable to differentiate between a freehold unit and a leasehold unit. They are paying the full price of the private lease scheme property but not owning the unit, only having a temporary possession.</li> </ul>  |
| Building Management Issue     | <ul style="list-style-type: none"> <li>• Buyers cannot form a Management Committee among the parcel buyer or lessee of strata titles as Strata Management Acts 2013 only recognise sole proprietor of strata title as the Management Committee.</li> <li>• There is no specific legal provision on the position of lessee in forming management corporations.</li> <li>• The appointed property manager was not clear about the actual management process in private lease scheme concept under current law.</li> <li>• There should be a suitable law on private lease scheme to overcome issues arising in managing private strata scheme.</li> </ul> |

**Discussion**

The National Land Code [Act 828], the Strata Title Act 1985, and the Strata Management Act 2013 are the laws in Malaysia that were discussed with the respondents of the case studies about the strata lease scheme in Penang. Additionally, the experiences shared by these respondents were analysed to identify potential solutions to the issues raised concerning the private lease scheme. The analysis summary is tabulated in Table 2 to briefly explain the potential solutions to the issues raised by the public.

Table 2

*Analysis of Case Study and Legislation*

| <b>Public Concern<br/>(According to<br/>Themes)</b>                 | <b>Potential Solution</b>  | <b>Reference</b>  |
|---|--|---|
| Buyers Are Not Protected as Lease Does Not Construed Proprietorship | A registered lease is an indefeasible registration that any party cannot contest unless the registration is fraudulent, or the registration instrument is invalid. The lessee has full rights to the strata unit during the lease term.  | Section 340(1), National Land Code [Act 828]                      |
| Limitation of Buyers Rights Under Strata Management Law             | Buyers who are lessees of the strata units have equal opportunity in Strata Tribunal just liked strata scheme owners.  | Section 107, Strata Management Act 2013                           |
| Building Management Issue   | When strata title is issued for each parcel, there is only one owner for all strata parcels, and that single owner becomes the Management Corporation.   | Article 2(3) 2 <sup>nd</sup> Schedule, Strata Management Act 2013 |
| Decreasing In Property Values                                       | The proprietor leases each strata parcel to buyers for a term of 99 years. This ensures that every strata unit sold is eligible for bank financing, as the bank can allow a registerable charge on the lease. If the lease term is lower, the strata unit may not be as favourable for bank financing. Due to the increasing prices of land in the market, the value of all units in strata leases has significantly risen.  | Case study experience   |
| Buyers Were Deceived  | According to the respondents, there was no clear evidence that buyers were being deceived by developers into buying a leased unit. The success of the Penang strata lease schemes development was due to the public's acceptance of the concept of buying a home through leasing, even though the purchased units were part of a strata lease scheme. Moreover, the fact that these units provided easy access to all the amenities, did not bother the buyers too much.                     | Case study experience   |
| Limitation of Current Law   | Strata lease schemes have been in existence in the state of Penang for more than 30 years and are still governed by Malaysian legislation. Since the beginning of the development of the Penang strata lease scheme in the late 1980s, the Strata Title Act and the National Land Code have been revised several times. With the introduction of the Strata Management Act 2013, the long-developed strata lease schemes were able to adapt to the need of newer legislation. To ensure that | Case study experience   |

|   |   |   |
|---|---|---|
|   | these lease schemes work with the law, it is important to understand their characteristics. The creation of the Penang strata lease scheme initially followed the available law requirements without the need for amending the Act, according to the respondents.   |   |
| Lessor Dominating All Sides of Contract | When purchasing a unit in a strata lease scheme, both the buyer and the unit proprietor must sign either a Sale and Purchase Agreement or a Lease Agreement, sometimes both. These agreements lay out the responsibilities and rights of both the lessor and lessee with regard to the purchased unit. Some lease schemes may require buyers to submit a Trust Deed or a Deed of Assignment, which explains who will inherit the unit within the lease term if the current buyer passes away. As per the law, the buyer has the right to peacefully and undisturbed enjoyment of the property during the lease term without any interference from the lessor or their associates. | Part 15 & Section 232(1)(a) of the National Land Code [Act 828] |

**Conclusion**

The study successfully identified issues related to private lease scheme ideas. Various legal concerns surrounding the private lease scheme concept were identified through the study, and potential solutions were outlined. The researchers found that several Malaysian laws could effectively address the legal concerns raised by the public regarding private lease schemes. To support their findings, the researchers relied on case studies of current strata lease scheme development in Penang, which further explained the legal concerns and highlighted the relevant laws necessary to mitigate them. By highlighting the relevant laws, the study sought to challenge the negative public perception of some private lease scheme projects, particularly those in Medini, Johore. Overall, this study provided valuable insights into the legal considerations surrounding private lease schemes and offered practical solutions to address the public's concerns.

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