

STRATACORPORATIONS FACING DIFFICULTCHALLENGES



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The Strata Corporation Act was passed in 1969. The Act had a big advantage in that once strata titles are issued by the Registrar of Titles, the Corporation is automatically formed with a given set of rules. The owners of each strata title become members of the Corporation and there is no necessity to register and deregister members on the sale of a Strata unit.

This represents a considerable benefit as we are not known for being keepers of records. This does not mean that the Strata Corporation does not have to keep records. It is still obliged to keep a record of its members and changes there to, but it does not have to file such records in any central registry.

If the Strata Corporation were a Company registered under the Companies Act, it would have to pay fees annually to the Registrar of Companies and would be required to note changes in their membership. There are several other requirements under the Companies Act but it is not necessary to point these out.

Having a corporation is a big advantage in that there is a legal entity which can sue and be sued and which can speak for all the registered owners. It can also bring a legal action on behalf of all the legal owners against an owner who is in breach of any of its rules or against third parties who breach a contract to repair a roof.

Despite having advantages, some of the weaknesses of the Act have been exposed by the passage of time, changing world circumstances, inflation and other factors. Let us take one difficulty that the corporation faces. The Act requires that the building should be insured for its full replacement value unless one hundred percent of the members in a meeting agree to insure at a lesser value. This problem shows how a well meaning provision can be affected by a change in circumstances. When the Act was passed there was not a great difference between the market value of a building and its replacement value. Today there can be a two hundred percent difference between the market value of the building and its replacement value.

A building could be valued at say \$70,000,000.00 and have a replacement value of \$210,000,000.00. The practical problem is that that building can only collect rent and maintenance fees based on a market value. Thus, it cannot collect sufficient maintenance to pay insurance based on the replacement value.

If it takes out insurance based on what it can afford it is in breach of the Act. It will not be in breach of the Act if it can get its members to agree to insure at a lower value but this is almost impossible where you have a number of members in a strata corporation. It is impossible to get a 100 % attendance in practice and thus most corporations are in breach of the Act. A related problem is that after hurricane Gilbert in 1988, most insurance companies imposed a 2% cess on their insurance policies and also the average clause. The effect of this is that if a building is insured for say \$100,000,000.00 and has damages of an insurable nature then the first \$2,000,000.00 of that damage would not be covered by the insurance company. The owners who are accustomed to hurricane damages see this as harsh and unjust, because quite often the damages caused by hurricane is equal to the excess. Thus, it brings into question the issue of why pay insurance when your chances of compensation is so low.

The average clause further compounds the problem in that when damages occur the insurance company is entitled to estimate the extent of the damage and to pay you only in proportion to the extent you have insured as it relates to the market value. Thus, if you have insured for say \$50,000,000.00 and the value of the building is say \$100,000,000.00, that will reduce your compensation by 50% as you are deemed to have insured to only 50%. When this is combined with the average clause, it reduces to a great extent the appeal of insurance.

This poses a challenge both to the Corporation and the insurance companies who might be forced to change their policies to make them more attractive to Corporations. This might not be easy as a number of our insurance companies depend on re-insurers to take a part of their risk and these re-insurers would look at Jamaica as part of a region and not as a single entity. This means that what is offered by re-insurers is more affected by world factors than what occurs in a specific area such as Jamaica. So we may have a good record in terms of protecting our buildings against hurricanes but if the insurance companies suffer losses in other areas, they may combine the risk and not offer attractive terms.

There are not many re-insurers so the element of competition does not play a serious part in getting a reduction of the premiums. This lack of proper coverage also affects lenders such as building societies which must ensure that with the falling away of the general insurance on buildings, their mortgages are insured in the event of an earthquake or some other event that totally destroys a building.

The building society may also have to ensure that there is a clause in their mortgage

which requires the borrower to inform them that general insurance is no longer being provided for the building. Strata insurance is unique in that individuals cannot insure by themselves, it has to be done collectively.

WHAT NEEDS TO BE DONE

The long awaited amendment to the Strata Corporation Act is required to allow a majority of the members present at a meeting to decide on the extent of the insurance they will take out.

Insurance companies need to introduce new policies that address the realities of the present situation while giving them a reasonable return for the risk they take. There is a need for insurance that covers earthquake, fire and hurricane which is affordable. ■