



TRANSITION OF EXISTING DEVELOPMENTS TO JOINT PROPERTIES

1. Introduction

Law 27 of 2017 updated the law relating to owners associations and provided a legal basis for the wide range of joint property developments being undertaken in Bahrain.

Under the older provisions in the Civil Code (repealed by Law 27) the focus was on an owners union established within a building, where separate title deeds are issued for apartments. Since that older law issued, land developments in Bahrain have become increasingly more complex, with growing popularity of villa joint properties for units sitting side by side (not one above another), sharing common areas for accessways, recreational areas and landscaping – see Article 52B of the Law.

Building developments have become larger, often mixing multiple uses in a single building or containing multiple high-rise buildings in a single owners association.

Developers also saw merit in having a complex of separate adjoining owners associations, managed by a higher-level main owners association – see Article 62F of the Law. This permitted the growth of integrated developments, designed around a consistent theme, managed in a uniform manner. This concept has been embraced in Bahrain, where integrated developments of various sizes, including hundreds of related owners associations, are now underway in its islands.

In recognition of the increasing size of developments, Law 27 sponsored the development of a professional group of managers to guide owners associations in the increasingly complex task of managing larger developments – see Article 66B. RERA now issues licenses to Owners Association Managers and has established continuing professional development courses.

On 7 May, RERA's Resolution 1 of 2020 regulating the Management of Joint Properties was gazetted. It provides a management framework for simple and complex developments. It recognises that up to three management layers may be created in such integrated developments with a central owners association, various main owners associations and multiple subsidiary owners associations.

Law 27 does not provide guidance on how small and large-scale developments, already underway when the law started in early 2018, should transition to operate under the new law. Resolution 1 of 2020 includes some general transition provisions to guide existing developments, including those where the developer is still actively involved in the development and those where the developer has already moved on following the sale of all units in the development.

The aim of this Bulletin is to provide more guidance on transitioning existing complex developments to joint properties regulated by RERA.



2. Resolution 1 of 2020 permits existing developments to formalise their joint property status

The relevant provisions in the Resolution are to be found in Part XI Transitional Procedures, Articles 90 and 91. These articles should be studied in conjunction with this Bulletin. It is important to note that the transition of existing developments is subject to:

- (i) the contractual arrangements entered into when the developer first sold land and building units to buyers. The Resolution does not override the contractual relationship, and so the starting point for any decision to transition the development and formalise the establishment of owners associations is the original sales contracts. The parties should ensure that the transition process is not inconsistent with the requirements of the sales contracts;
- (ii) the government approvals given to the masterplan and Final Land Subdivision Plan and the contents of any Technical Interface Office agreement.

Two scenarios are envisaged by the Resolution:

2.1 Sales contracts intended the creation of a joint property. Where original sales contracts prepared by the developer and signed by buyers expressed an intention that the development operate as a joint property, transition is regulated by Article 90D and E of the Resolution.

Such developments may have several characteristics:

- (i) there are areas of land in the development that may be used by all unit and villa owners;
- (ii) the maintenance of the shared areas is funded by contributions by all unit and villa owners;
- (iii) a broad expectation that such shared areas will operate as “common areas” that are owned and managed by an owners association to be formalised at some future stage;
- (iv) the developer may intend to exit the development as soon as the owners association is operational. Alternatively, the developer may seek to be formally appointed as the Owners Association Manager at the first General Assembly;
- (v) the developer may have taken steps to set up a regular meeting of owners, to engage them in taking over the management of the development; and
- (vi) owners already have title deeds for their units / villas but no meeting of the owners association has been conducted for the purpose of officially approving the new owners association status.

In these developments, the process is:

- [to prepare the core joint property documentation](#). This includes (i) a [Property Location Plan](#) defining each individual unit or villa and a common area that is shared between all unit and villa owners; (ii) [the joint property by-laws](#) that govern the management of the development and general rules for the operation of the owners association; and (iii) for main and central owners associations, [the Articles of Association](#).
- [to conduct a meeting of owners where the core plans and documentation are approved](#), where a board is elected, a budget is accepted, maintenance schedule considered and insurance approved, etc. The meeting will generally be conducted according to the meeting



procedures set out in Resolution 1 of 2020. Decisions will generally be made by ordinary resolution as specified in that Resolution. All approved plans and documentation must be registered by SLRB.¹

- [to lodge the Property Location Plan and documentation with SLRB for registration](#). SLRB will then attach the plan and documents to the appropriate title deeds in accordance with Article 51A of Law 27.
- [to lodge copies of the plans and documentation with RERA under Articles 4 and 41 of the Resolution](#). This will permit RERA to issue a certificate to the newly appointed board and to refer the by-laws to SLRB for entry into the Special Register of Joint Properties.

Meeting of owners in a complex development

If the development is larger and more complex, requiring a main owners association to be established, then the core joint property documentation will consist of (i) a plan defining the main units and main common area; (ii) main joint property by-laws and (iii) main articles of association. A meeting of the main association will be required under Article 90D. The main owners association will have various members and its structure and membership will be described in its core documentation.

Some of its members will be subsidiary owners associations. These subsidiary owners associations will participate in and vote at the meeting of the main association. Article 90E states that they may be represented at the meeting by the duly appointed chairman of the board of directors of the subsidiary owners association. If, however, the subsidiary owners association has not yet been formalised, its members should consider conducting a meeting to formally make the subsidiary owners association operational before the meeting of the main association. If this is not possible, the owners within the soon-to-be established subsidiary association should informally select a representative to join the meeting of the main association, as envisaged by Article 90(2).

RERA has prepared templates of all forms for the notice of meeting, agenda, quorum assessment and minutes of meeting and these are outlined in Paragraph 3.7 below.

- 2.2 Original sales contracts did not clearly evidence an intention to create a joint property** but the development included areas of land the use of which was shared by the unit or villa owners. Generally, the maintenance of the shared areas is funded by contributions made to the developer by unit and villa owners. In this scenario, as the development was not specifically created as a joint property, this procedure relies on the developer agreeing to create the joint property.

¹ Note that if the transitioning joint property is a single owners association within a building, the common area will probably already be clear in the already-registered cadastral survey of flats in SLRB's records.



A development will generally have the following characteristics:

- (i) the developer will generally still be present within the development;
- (ii) owners share the use of facilities and pay contributions to the developer for the maintenance of the shared areas. The developer manages all funds received and may not have a reporting process to inform buyers about the use of the funds;
- (iii) the shared facilities may be in a title deed in the name of the developer;
- (iv) the developer is undertaking the full management role and has not initiated steps to establish and to hand over management functions to a representative body of owners;
- (v) the developer is now supportive of a move to hand over the shared areas to an owners association and to exit from the development;
- (vi) owners will already have their title deeds but no steps have been taken to create an owners association.

In general terms, the process of transition will be similar to that described in Paragraph 2.1 above. This category of development may transition according to the procedures in Article 91 of 1/2020. However, owners may face additional obstacles and areas for potential conflict and disagreement arising from lack of clarity in the original sales contracts.

For that reason, Article 91 imposes duties on the developer to initiate the transition and (i) to prepare the plans and core documentation; (ii) propose a meeting and meeting process that will be acceptable to owners; (iii) to initiate the meeting of owners, prepare and send the notice of meeting and agenda; (iv) to convene the meeting; and (vi) to prepare and circulate the minutes of meeting, setting out all resolutions passed at the meeting.

It is expected that the meeting will be run along the lines set out in Resolution 1. However, the developer must design an appropriate process, taking into consideration the disclosure in the sales contracts to buyers and the expectations of current owners. An ordinary resolution is generally passed if endorsed by the majority of owners present at or participating in the meeting. However, as indicated above, a lack of clarity in the sales contracts opens potential for disputes between owners, including:

- disagreement over the value of their vote;
- disputes over apportioning the contributions for service charges required to fund the shared area;
- some owners may prefer not to operate as an owners association and prefer not to permit the developer to relinquish the management role.;
- concern that the land and facilities to be transferred from the developer to the owners association are in disrepair; and
- the developer has not provided an assessment of the likely cost to owners or made an appropriate contribution to upgrade the facilities.

It is not expected that the developer will attempt to vote on behalf of buyers under any contractual authority or power of attorney. It is important that all owners actively participate in the process.



Article 91D permits owners who disagree with the outcomes of the meeting to initiate a court action opposing the transition. In such cases, the transition action will generally be delayed until the court action is resolved.

3. Activities to simplify the handover from the developer to the owners association

The developer seeking to transition under Paragraph 2.2 above may consider using the following to simplify the process of obtaining consent by owners to the new status:

3.1 Communication Plan – the developer should consider how best to communicate the proposal to recommend transition of the development. A full list of members and addresses is required. All documentation required to be approved by owners should be circulated for review, giving time to owners to obtain independent advice where appropriate. A preliminary information meeting or owners has worked for some recent complex developments.

3.2 Condition report – the developer will be handing over common areas including plant and equipment. He should make adequate disclosure of the existing condition of all assets, and provide all service details to date and to be continued by the owners association. An independent condition report may be commissioned by the developer. Before supporting the transition, the owners may require the developer to make a contribution to the reserve fund for upgrading or replacing equipment that is nearing the end of its operational life.

3.3 Engaging Service Charge Modeller – two vital issues to be addressed by the developer are (i) what voting value is given to each member? (ii) what contribution should each member make to the shared expenses? There are professionals in the region with expertise in recommending an appropriate service charge profile for the development. They will generally use a measurement of the unit area (there are various ways of assessing area, including land area, gross floor area) and an assessment of beneficial use – how much potential use of the common area each member enjoys. An objective assessment by an expert may reduce the risk of challenge from owners.

3.4 Representation on the Board – Resolution 1 of 2020 provides relevant options for board membership of the main association and representation of subsidiary associations. Members should be provided a mechanism for nominating for board membership so that fair representation of various view is achieved.

3.5 Appointing an Independent Observer – RERA approves Independent Observers who may be engaged by owners associations. This step is compulsory for transitioning complex layered joint property developments. The Observer will monitor the meeting process and report to RERA.

3.6 Clarifying who can vote at the initial owners meeting – it is recommended that all owners participate at the first meeting to officially approve the creation of the owners association and accept plans and governance documents. Some developers may wish to exclude owners who have not paid service charges to the developer, but this is a questionable practice if the owners association will not actually be created until endorsed by the meeting. RERA supports clear and



transparent disclosure by the developer, so that owners can understand the benefits of endorsing the transition to a joint property.

3.7 RERA template forms for initiating meetings – RERA has provided a package of template forms for initiating and conducting meetings of members. They may be used for transitioning complex developments under the two scenarios outlined above. These are available in the HelpDesk and are within the RERA Guide to Owners Associations and Joint Properties published on the website. In particular, the following should be studied and adapted to fit the needs of the development.

- Form 1* **Notice of General Assembly** – this should be adapted to fit the particulars of the complex development. It is useful to include an item calling for nominations for the board. Copies of all plans, documents, budgets and appointments to be voted on at the meeting to be circulated with the notice. It is essential that the developer use a complete list of current owners and their addresses.
- Form 2* **Agenda for meeting** – vary the agenda as required. For example, if there are existing service contracts for landscaping, maintenance, security, etc, that the developer will assign to the owners association, these should be disclosed and owners requested to vote on accepting the contracts.
- Form 3* **Proxy Form** – to be used where an owner cannot attend, nominating a person to attend instead.
- Form 4* **Voting Paper** – where the owner cannot attend but wishes to send a Yes/ No vote on specific items.
- Form 10* **Application to register or update Joint Property documents** – Form 10 is used to apply to RERA for a board certificate. Also the Joint Property By-laws and articles of association may be lodged with RERA using this form.
- Form 10B* **Registration of Board of Owners Association with RERA** - this form is filled in by the chairman, listing all persons appointed to the board by the general assembly.
- Form 11* **Owners Association General Assembly Reporting Form** – this useful form should be used to record the CPRs of owners or representatives as they arrive at the meeting, it is also useful for the meeting chairman to calculate if a quorum is present.
- Form 13* **Template for Joint Property By-law – simple** – select the appropriate template and add detail following the RERA guidelines.
- Form 14* **Explanatory notes for simple joint property by-laws**
- Form 15* **Template for Joint Property By-laws – complex**
- Form 16* **Explanatory notes for complex joint property by-laws**
- Form 17* **Minutes of Meeting** – this very important document summarises all resolutions passed at the meeting and is generally required by RERA to support all applications.

Note that standard Articles of Association are also published on the RERA website.

4. Application to RERA for Board Certificate

Where owners have conducted an initial meeting to formalise the owners association of a general assembly, and board members have been appointed, the board may apply to RERA for the issue of its



Board Certificate. This authorises the opening of bank accounts, transfer of the electricity account for the common area into the name of the owners association, etc. If an Owners Association Manager has been appointed, the manager's name should also appear in the certificate as the manager has signing rights in some instances.

The application should be made on Form 10, accompanied by:

- a duly completed Form 10B;
- copies of smartcards and title deeds for board members;
- minutes of meeting signed as required in the template, evidencing the appointments;
- a declaration signed by the Board Chairman and another representative that board members have been duly appointed at a meeting and meet the legal prerequisites in Article 35 of Resolution 1.
- Any other evidentiary requirements set out in the forms.

All forms must be signed as indicated in the forms.

Further information is available from oa@rera.gov.bh. For guides, forms and further explanatory bulletins, see www.rera.gov.bh.