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## PROPERTY CHAT



# Integrity in managing maintenance funds

**A**mong the great leaders of the 20th century is Mahatma Gandhi who had a strong impact on his contemporaries. Albert Einstein wrote of him, "Generations to come, it may be, will scarcely believe that such a one as this ever in flesh and blood walked upon this earth."

B R Nanda's 'Mahatma Gandhi: A Biography' states, "He was a man who schooled himself in self-discipline, who made life a continual process of growth, who shaped his environment as much as he was shaped by it, and who tenaciously adhered to certain values to which civilised humanity pays lip-service while flouting them in practice."

You may ask: Is integrity still in vogue, or is it something only spoken of by politicians? In particular, can strata property parcel owners see them being practised within their community?

The following story discusses this point.

### Developer's account

A developer completed a middle-class strata development comprising nearly 600 apartment units before handing over the units to the parcel owners. Under the Building and Common Property (Maintenance and Management) Act 2007 (Act 663), now repealed, the developer opened a bank account, referred to as the developer's account, for the strata development, which was where the parcel owners' maintenance charges and sinking funds for the development were paid into.

The JMB (Joint Management Body), which comprised the developer and the parcel owners was then formed, after which the developer's managing agent's services were stopped and another managing agent was engaged.

### JMB account

Under Act 663, the JMB was required to open its own bank account, referred to as the JMB account. To do so, the bank required a copy

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of the JMB Certificate issued by the Commissioner of Buildings (COB) certifying the formation of the JMB. Without the physical copy of the certificate, the bank would not open the account.

Before receiving the certificate, the JMC (Joint Management Committee) resolved that the parcel owners' maintenance charges and sinking funds would continue to be paid into the developer's account. However, cash payments for the maintenance charges and sinking fund would be paid into the chairman's personal bank account.

This was so that the chairman could easily withdraw the money from his account and pay expenses incurred for the maintenance and management of the building and common property. As such, the JMC could reduce its dependence on the developer to withdraw the money from the developer's account.

Many parcel owners questioned the JMC's action, particularly the use of a personal bank account. Finally, the JMB certificate was issued and the JMB account was opened. From then on, all payments for the maintenance charges and sinking fund were paid into the JMB account.

The time for the Annual General Meeting (AGM) came and two groups of owners attended. The first group (Camp A) wanted the current committee members to quit while the second group (Camp B) wanted the committee members to stay.

During the AGM, owners in Camp A got impatient. The chairman's answers to questions about the maintenance funds in his personal bank account were far from satisfactory and the two camps argued loudly.

Suddenly, a man shouted for an election to be held while approaching the chairman who then stopped talking. The guy continued to shout, daring the chairman to a fist

fight and angrily pointing out that the money belonged to the parcel owners and not the chairman, but fortunately a physical fight was prevented.

An election was thus held, during which the majority of the parcel owners elected a new chairman and other new committee members.

### Terms of management

The Strata Management Act, 2013 (SMA) provides clear terms about the management of the maintenance funds. Among others, section 23 of the SMA provides that:

- (1) The JMB shall open and maintain a maintenance account with a bank or financial institution.
- (2) The maintenance account shall be administered and controlled by the JMB and shall consist of:
  - (a) All balances of moneys in the maintenance account transferred by the developer to the JMB under paragraph 15(1) (a);
  - (b) All or any part of the charges imposed by or payable to the JMB under this Act;
  - (c) All moneys derived from the lease, rent or use of any property which may be lawfully charged by the JMB
  - (d) All other moneys and property which may in any manner become payable to or vested in the JMB in respect of any matter incidental to its functions and powers; and
  - (e) All other moneys lawfully received by the JMB including interest, donation and trust.

Additionally, section 24 of the SMA provides that the JMB must open and maintain a sinking fund account and all contributions to the sinking fund must be paid into the account.

Under the terms of the SMA, all moneys for the maintenance and management of the building and common property must be deposited into the maintenance account and sinking fund account.

### JMB certificate

In the above story, the chairman's action of depositing the cash payments into his personal bank account went against the terms of the SMA.

However, in light of the bank's request for the JMB certificate, the question that arises is: Could the bank, in order to open the JMB account, have relied on the minutes of the AGM as proof that the JMB had been formed? After all, all things being equal, the COB would have to rely on the minutes as proof before it issues the JMB certificate. It is to be noted that the SMA is silent on the time period within which the COB is to issue the JMB certificate.

As in the story above, the requirement for a physical copy of the JMB certificate had indirectly or otherwise caused a dilemma for the JMB and JMC.

### Conclusion

Similar to the business world where business people depend on their integrity and reliable product or service to build and keep customers, it is submitted that parcel owners want their maintenance funds to be managed with transparency and expect the committee members to act with integrity. Few parcel owners will opt for a physical fight to prove this point while other owners may express the point by voting for a new management committee.

As tough a task as it may be, JMCs who act with integrity stand to win the votes of the majority of the parcel owners. These JMCs would also add significant market value to their strata development and respective parcels in the development.



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