



Changing hands

fmME EXPLORES THE CURRENT STATUS OF JOP LAW WITH THE EXPERTS

On January 13, 2011, the Jointly Owned Property (JOP) law was implemented in Dubai, UAE. Also known as Strata law, it has affected facilities management firms in a very significant way.

Before the law came into existence, developers awarded maintenance contracts for public facilities to FM companies. However now this decision rests in the hands of the property owners, who belong to what is called the Owners Association (OA).

FM firms rose to the challenge of dealing with the new rules, and have also formed Owners Association Management (OAM) wings to deal with assisting OAs with this task.

Roger Ghandour, director of association management, Mace Macro Owner Association Management says that with the implementation of the law, some FM firms realised that in order to continue to provide services to mixed use developments, primarily freehold communities in Dubai, they had to re-align

their business with the changes taking place in the industry.

"The JOP law only permits companies with the Owner Association Management license to manage residential, commercial and/or mixed-use communities considered as jointly owned properties. FM companies that want to remain in the OAM industry may face several barriers to entry," he explains.

Gopal Krishnan, general manager - residential, Emrill Services says integrated facilities management companies have no reason to fear the implementation of the strata law. He explains: "Companies that have largely subcontracted over the years have suffered major organisational and internal changes in order to cope with the current requirements of the law."

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Ellen Rosenbaum
 Service fees collection is a big challenge for OAMs.



OAM STATUS

Ellen Rosenbaum, senior association manager, Stratum Owners Association Management says OAMs are the central point of any OA. "The board of directors may make decisions and set policies but it is the OAM's job to carry out these mandates. Just as the general manager of a large corporation makes decisions, recommendations and handles day-to-day affairs, the OAM shares the same duty of care."

Ghandour agrees with Rosenbaum and says that a full service OAM can, and should, take the weight off the shoulders of the board of the OA.

"Most board members are volunteers, and have very little formal training in owners association management and will look for the expert advice of their association manager to help make informed decisions about their communities," he explains.

FAST FACT
2011
YEAR JOP LAW IMPLEMENTED

OAM's role is very important in the whole process. Their role is vast; it ranges from daily management to sourcing suppliers, and from advising the board and collecting service fees from homeowners. Their knowledge to process and assist with cash flow, budgets, insurance, legal paperwork and communications is essential to effective management."

Rosenbaum adds that the financial management of the OA is always paramount. The OAM is responsible for drafting the annual budget, assessing and collecting service fees and monitoring expenses.

Rosenbaum explains that the facilities management is an integral piece as well. "There are literally millions of components in a building, and each must

// THE BUDGET IS BASED ON EVERY UNIT OWNER PAYING HIS FAIR SHARE. JUST A COUPLE OF NON-PAYERS CAN THROW THE ASSOCIATION INTO A FINANCIAL CRISIS. //

ELLEN ROSENBAUM

be maintained and should be operating efficiently. The OAM is the co-ordinator for all of these services.

"I like to imagine it like a busy kitchen with everyone working hard in their respective areas. When the bell rings, a beautiful entrée arrives and the diner is unaware of the frenzy behind the scenes. So the next time you walk into a tower and the doors open, the air temperature is perfect, the lift works promptly, floors are clean and security greets you with a smile ... thank the OAM and staff members."

CHALLENGES FACED

An important aspect of OA and OAM operations is the ability to use a bank account. RERA had previously announced OAs would soon get the right to open their own accounts but the process has not yet taken off.



Gopal Krishnan
 Board members need to have a clear understanding of their role.

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GOPAL KRISHNAN

Ghandour says this is the biggest challenge faced by these associations. "This links to the confidence and ability of homeowners to pay their service charges on time. Some homeowners have resisted paying to the developer's bank account due to mistrust and negligence; this makes it harder for OAMs to collect the necessary funds to maintain their communities," he explains.

Rosenbaum adds to this and says her entire team believes service fee collections are the biggest challenge.

"Owners associations are not-for-profit organisations. There is no 'slush fund' to draw from should an owner stop contributing. The budget is based on every unit owner paying his fair share. Just a couple of non-payers can throw the association into a financial crisis," she says.

According to her, when that happens, one or more things can occur: services get cut back or eliminated, facilities may be closed, equipment cannot be properly maintained, reserve accounts are unfunded, neighbours get angry with each other for not paying, and there is neighbourhood discord. "This is a challenge in many buildings in Dubai

today. The high profile neighbourhoods that have been in the media for this issue have helped raise awareness for the entire industry."

Krishnan mentions another challenge, which is related to the issue of saving on costs. "There are a few issues that seem to be quite prominent and one of those is the conscious effort of some OAs to divide the provision of facilities services across different companies to save on costs. This works against co-ordinated maintenance efforts of having a single provider when staff members are unable to work with each other as they belong to different companies. OAs then end up losing cost efficiencies and a smooth service delivery."

He adds that when members join the board without a clear understanding or information of their role as a member, it can create problems. "Once a board member realises the huge financial and legal accountability that comes with the role, they often regret their decision and on occasion have been known to step down," says Krishnan.

SLOW MOVEMENT

However, JOP law has not yet been fully implemented and there are a few negative aspects as to how it is progressing.

"While we welcome the government role and that of related agencies in the creation of the JOP law and the associated directions, its enforcement is not always necessarily enforced to its full extent," explains Ghandour.



→ **Roger Ghandour**
OAs should be recognised as legal entities.

One of the areas of concern in this regard, he says, is legitimising Owners Associations from a legal standpoint with the ability to function, decide and act as any other business entity.

"Another cause for concern is the inability of owners associations to open a dedicated escrow account to manage their receipts and payments; many Owners Associations are initially heavily reliant on the developer's bank account and are therefore subject to their policies and procedures, which may not offer the transparency demanded by owners associations and their elected board members," he continues.

Krishnan adds that because of no precedent to follow and with little experience, the decision making process is "quite long and drawn out", which can often lead to delays.

OAM RESPONSIBILITIES

What do they manage?

- **Mace Macro** currently provides OAM services to a six tower residential community in Dubailand, Skycourts, and a residential tower in Jumeirah Lake Towers, Madina Tower.
- **Stratum** works in International City, and all the way to Dubai Marina. Its portfolio includes residential villas, low rises, high rises and retail units. During this transitional period with developer handovers so prevalent in the marketplace, the firm is also involved in handover consultancy agreements.
- **Emrill Services** is working with several Owners' Associations across the UAE including the Oceana, Palm Jumeirah and Etihad Towers.

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ROGER GHANDOUR

"Contract length is another negative aspect of the law's implementation as the length of contracts are only for a year and this leads to OAs losing out on cost efficiencies, life cycle maintenance and asset replacement which has an effect on the community's budget and bottom line," he says.

Another disadvantage is that current service providers are no longer allowed to sub-contract services which means re-working existing contracts and several small tenders directly with subcontractors, according to Krishnan.

In addition, because the Interim Boards currently have no legal standing without approval, he explains that things are "still very much up in the air with no final decisions and firm contracts to allow service providers to start making improvements."

The biggest challenge dealing with the JOP law is that it is a "work in progress" according to Rosenbaum, with many parts of the legislation still shifting and evolving.

WHAT NEXT?

Even with the challenges and slow progression, there is a goal in sight. Owners Associations require full registration status and must be recognised as a legal entity, enabling and empowering them to exercise their full rights under the JOP law and directions, says Ghandour. "Developers should be in compliance with the law and should not delay transition of control to OAs," he adds.

Establishing independent bank accounts for OAs is the top priority, according to Rosenbaum. "Currently, many buildings have their funds managed by the developer while the manager operates the building. It's a cumbersome process. When each OA has its own bank account, the process will be streamlined and the OAs will have more financial independence. RERA is working on the issue. OAMs have formed a steering committee to interface with the banks and RERA to create workable procedures for all parties. The final product is still in the development stage with progress forthcoming."

Krishnan says OAMs need more power. "Once the law comes into full effect the biggest challenge will be cash management and this will be faced by OAMs. Under the current law, the OAM must get approval from the OA for all services and repairs required by the property irrespective of monetary implications. Securing approvals can often prove time consuming and therefore the empowerment of OAMs is a progression that we are looking forward to simplifying the process in the future."

Rosenbaum adds that OAMs are usually well versed in the owners' association structure so they are very active in setting the guidelines and protocols for each community they manage. "Since each community has a distinct personality, the guidelines may differ greatly. Whilst some may think that managing change is a challenge, it also provides for opportunity. This is a time in the UAE growth cycle when OAMs can really have a positive impact." ■

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