

# **EFFECTIVE WAYS JMB**

— CAN SUCCESSFULLY —

# **RECOVER OUTSTANDING MAINTENANCE CHARGES**

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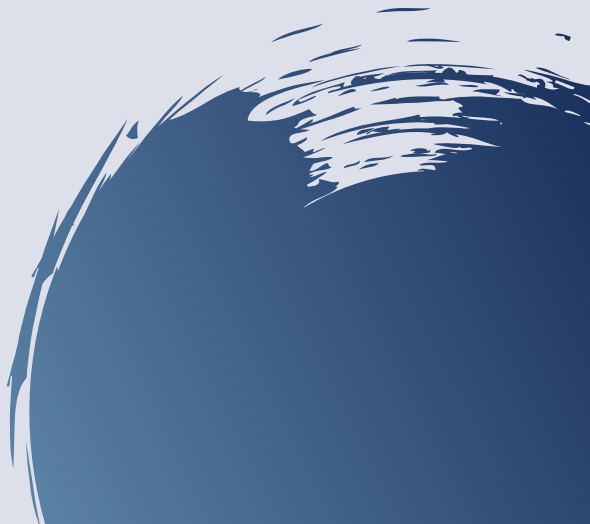
# INTRODUCTION

All unit owners of strata property are obligated to pay maintenance charges which include service charge and sinking fund. Nevertheless, there is one main problem that always arises and that is the failure of a unit owner in maintenance charges payments. This is when you, as the Management Body steps in to recover the outstanding charges. This is according to the Strata Management Act 2013 and the Strata Management (Maintenance and Management) Regulations 2015 (“Regulations”).

Is this happening to you now? Well, this eBook is prepared for you.

Therefore, in this article, we will provide assistance for you, Management Bodies on steps to recover the outstanding Maintenance Charges from purchasers, parcel owners, and proprietors in the following :

- METHODS THAT ARE MORE SUITABLE FOR RECOVERING SMALLER AMOUNTS
- WHAT ARE EFFICIENT METHODS FOR RECOVERING HUGE OUTSTANDING AMOUNT?
  - A. RECOVERY BY WAY OF COURT
  - B. RECOVERY BY WAY OF TRIBUNAL
- PROS AND CONS BETWEEN THE COURT AND THE TRIBUNAL
- SUCCESS RATE BETWEEN TRIBUNAL AND COURT



# LET'S START OUR DISCUSSION WITH RECOVERING THE SMALL AMOUNTS

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# METHODS THAT ARE MORE SUITABLE FOR RECOVERING SMALLER AMOUNTS

Provision of Law here refers to the above-mentioned Acts which are the Strata Management Act 2013 and the Strata Management (Maintenance and Management) Regulations 2015.

Under this subtopic, these methods are more convenient to recover smaller outstanding amounts and the methods are as follows:-

- Publishing names of defaulters
- Restricting access into building (deactivation of access cards)
- Restricting access/use of common facilities
- Installment Payment Scheme

## **Publishing names of defaulters**

Management Bodies can display defaulters' lists showing the names of the defaulting proprietors, their unit number and their outstanding amount. The Management Bodies may then display the defaulters' list on notice boards in the building.

## **Restricting access into building (deactivation of access cards)**

Management Bodies can also deactivate a defaulter's access card without prior notice until the defaulter has fully settled their outstanding Maintenance Charges. The defaulter shall pay RM50.00 to reactivate the card.

## **Restricting access/use of common facilities**

Management Bodies may prohibit or suspend a defaulter from using the common facilities or services provided. Common facilities such as swimming pools, elevators, and gym. This includes car park lots.

## Installment Payment Scheme

Management Bodies may enter into an installment agreement to settle defaulter's outstanding maintenance charges. This agreement may include terms and conditions deemed fit and proper by the Management Bodies, including the number of installment and withholding any deactivation of access cards or restriction to common facilities.



# **WHAT ARE EFFICIENT METHODS FOR RECOVERING HUGE OUTSTANDING AMOUNT?**



Going to court is too expensive? Going to Tribunal will take too long? Don't worry, in this topic we will be elaborate more on:

- a.Recovery by way of Court
- b.Recovery by way of Tribunal
- c.Pros and Cons Between the Court and the Tribunal

## RECOVERY BY WAY OF COURT

Now that we have already explained to you the 5 methods above that you may choose to act on when there is a default of payment for maintenance charges. But what if the amount of outstanding charges are bigger?

You can either file a claim in court or go to the Strata Management Tribunal for recovery of the said sum. ASCO Law has successfully helped 13 property managers in claiming their debt owed to them. Knowing your rights and lawyers can help you from A to Z.

Precedent case:

In the case of *Wisma MPL JMB v Malaysia Pacific Corporation Berhad* [2018] 1 LNS 1711, the plaintiff claimed recovery of outstanding maintenance charges (sum of nearly 8 million Ringgit) in court based on Section 25(6) of the Strata Management Act 2013. This provision provides that if the sum remains unpaid by the unit owner, the joint management body can recover by way of court or tribunal in line with Section 34 of the same Act.

Writing a simple notice of demand will not be sufficient for you to recover the outstanding payment. With the assistance of lawyers, they will help in drafting claims, summons, and represent you in Court. Therefore, it will be less hassle for you as it is fully handled by your lawyer if you hire one. Simple right?



# RECOVERY BY WAY OF TRIBUNAL

As you may already know, the Strata Management Tribunal or the Tribunal is a body established under the Strata Management Act 2013 to hear and decide on certain matters relating to stratified properties. The main difference between recovery by way of Court and the Tribunal is the amount of the claim. If you wish to claim at the Tribunal, the total amount of claim cannot exceed RM250,000.00. Meanwhile, in Court, you can claim regardless of the amount of your claim, but those amounts will indicate which Court will hear your claim.

Recovery by way of tribunal involves a bit more hassle as compared to by way of Court. There are forms that you need to fill in, fees to be paid, negotiation for settlement between you and the defaulter, and lastly is the award to be given by the Tribunal without delay and within 60 days from the first day of hearing. The Tribunal will depend on your situation and circumstance to decide how the proceeding will be conducted throughout the whole process.

# PROS AND CONS BETWEEN THE COURT AND THE TRIBUNAL

For this part, we will briefly explain to you what the pros and cons are when you choose either court or the tribunal for you to resolve your problem.

Firstly, in terms of the procedure wise, tribunal proceedings can be a bit more difficult as you have to go through the whole process on your own unless it is very complex, the Tribunal can allow you to be represented by your lawyer. However, the other party shall be represented as well because they are entitled to. Thus, this is the difficult part of it.

While, if you choose to resolve it at Court, your lawyer will assist and settle everything for you.

Next is the duration. As for the tribunal, it depends on the availability of the tribunal. Once available, you will proceed for your hearings. Meanwhile, court procedure will be more clear that it takes about 2-3 months for Judgement In Default, 6-8 Months For Full Hearing, 2-6 Months For Execution Proceeding. Therefore, duration here depends on the circumstances of the whole procedure.

Lastly, you may not have much of a choice if your claim exceeds RM250,000.00 which means you will need to go straight to Court.

	 <b>TRIBUNAL</b>	 <b>COURT</b>
<b>PROCEDURE</b>	<p>The Petitioners Need To Go Through Lengthy Process On Their Own.</p> <p>Lawyers can assist with document preparation.</p>	<p>Less Hassle As It Is Fully Handled By The Solicitor (lawyer)</p>
<b>MONETARY JURISDICTION</b>	<p>Only Up To RM250,000</p>	<p>Unlimited Depends On Jurisdiction Of Each Court</p>
<a href="http://asco law . co">asco law . co</a>		
<b>COST</b>	<p>Cheaper but comes with more effort and time</p>	<p>Costs more yet still affordable and more valuable with the service provided</p>
<b>DURATION</b>	<p>Depends On The Availability Of The Tribunal.</p> <p>Due to amount of parties queuing to the same tribunal, no certainty of duration</p>	<p>Approx 2-3 months to obtain judgement</p> <p>*in the event of a full hearing, time estimation may be different.</p>
<b>EFFECTS</b>	<p>Once judgment obtained, still require judgement to be registered in court under a different procedure to enforce judgement</p>	<ul style="list-style-type: none"> <li>• Possibility To Be Listed Under CTOS Is High.</li> <li>• Can Be Enforced Straightway Once The Order Has Been Obtained.</li> </ul>
<b>JURISDICTION</b>	<p>Only Certain Jurisdiction (e.g. Does Not Include Dispute Over Ownership)</p>	<p>Unlimited Jurisdiction</p>

COURT VS TRIBUNAL : PROS & CONS

# SUCCESS RATE BETWEEN TRIBUNAL AND COURT

As the Tribunal seems stricter, the award to be given by the Tribunal will be at the end of the proceedings and can only be enforced once it has been registered in Court.

Meanwhile, at the Court, the possibility of having the Defaulter to be listed under CTOS is higher. Furthermore, usually when the order is given by the Court, it can be enforced straightaway. For example, when the Court has given an order that the defaulter shall pay the debt owed to the management body, the payment shall be made from the date of the order. Therefore, even if bringing your claim to Court will be costly, your lawyer will help you at their best to get what you deserve.

Hence, as there are pros and cons, it is your wise choice to make.

As you have read through this article, you are now at the end of it. The good condition of the strata properties depends not only on the management bodies to maintain them, but money too in order to be used to pay everything that is due.

We hope that you find this article useful, and if you have any questions, do not hesitate to ask us! We will be at your service.



**Do you require more information  
or need a consultation?**

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