

Public Consultation

Town House and Gated Community Legislation
Corporate Area
Saint Andrew High School Auditorium
March 6, 2018

FOR PUBLIC DISCUSSION
AND RECOMMENDATIONS :
NOT CONCLUSIVE

Background



Increasing number of developments

Housing and Commercial

Areas owned in common by the lot owners.

Owner/occupiers fail to pay maintenance costs,

Challenges the ability to adequately maintain the common areas.

Need for Legislation

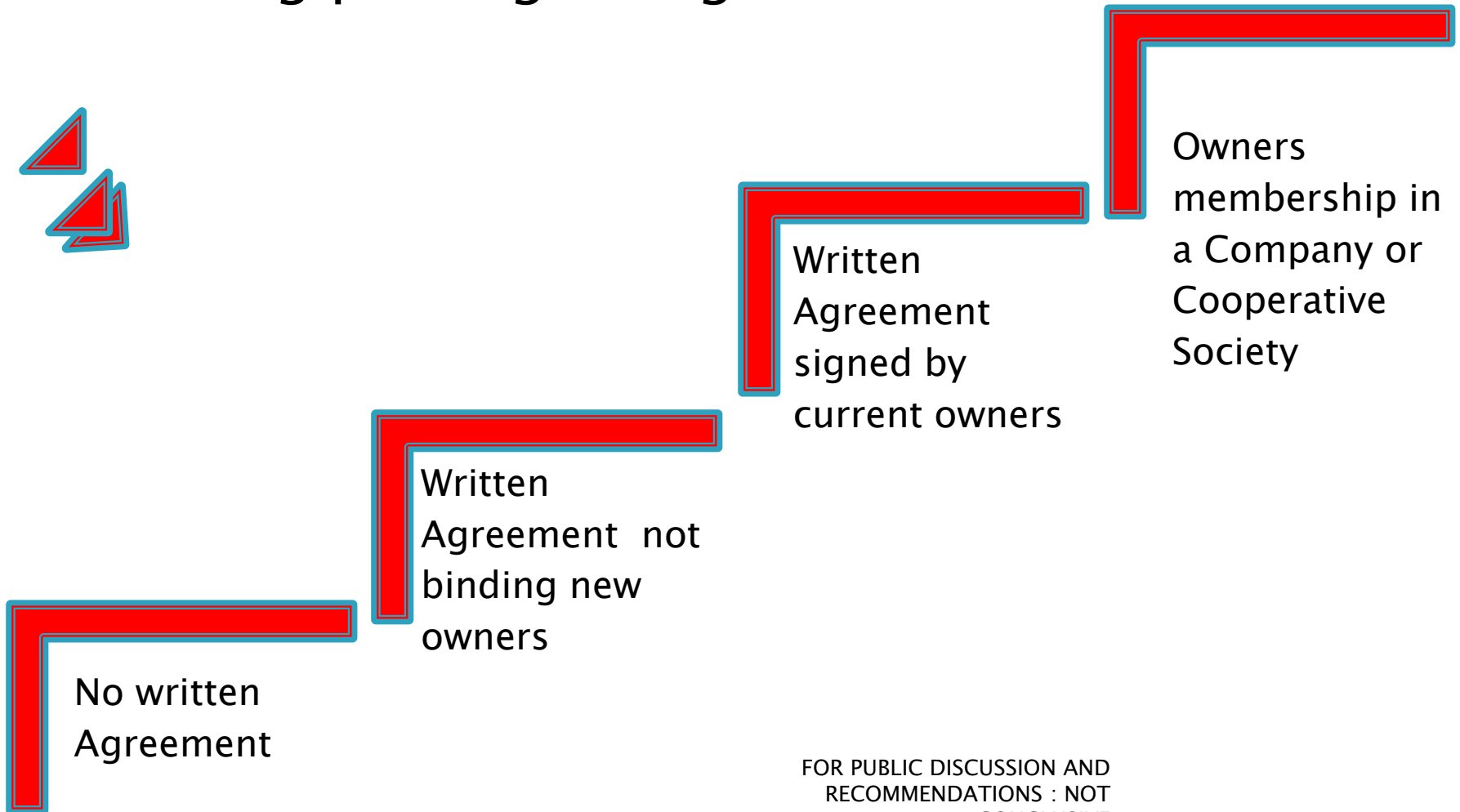
No formal legal system for the organization of owners into a suitable entity with the requisite powers to levy and enforce maintenance payment on property owners



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RECOMMENDATIONS : NOT
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Obligation to Pay Contributions

Existing paradigm : Agreements



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Obligation to pay

Proposal

- ▶ Duty to pay not reliant on Agreement/ Contract
- ▶ But a **Statutory Obligation** to pay
- ▶ The duty to pay will be unchallengeable

CORPORATION

Proposal



- ▶ Owners to become a corporation.
- ▶ Corporation sue in its name currently one or more lot owners would have to be the Claimant in any suit.

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Proposed Duty and Power of the Corporation

▶ Financial Management

- Establish fund for management and administration of common areas
- Set the amounts to be raised for the fund
- Collect those amounts by contributions “maintenance” from lot owners
- Requirements for accounting records

▶ Property management

- Insure common property
- Minimum public liability insurance
- Repair and maintain common property

▶ Executive Committee

- Corporation to function through

Failure To Pay

Current situation

- ▶ One Option: sue for payment
- ▶ Suit has to be filed in the name of a lot owner

Failure To Pay

Proposal:

More Options to enforce the obligation to pay

- ▶ Suit filed in the name of the Corporation (not the owners)
- ▶ Set time frame for delinquency to be actioned
- ▶ Interest on amounts owed
- ▶ Unpaid money a charge on the lot and runs with the lot
- ▶ Charge to rank in priority to mortgages
- ▶ Powers of Sale
- ▶ Court Order for rent to be applied.

How to Calculate Contributions

Concepts:

- ▶ Based on a fractional interest in the common property as stated on the lot title.
- ▶ Proportionately as determined by a qualified valuer
- ▶ Proportionately as determined by the developer of the scheme
- ▶ Proportionately to be determined by the Corporation

By-laws

- ▶ Should there be legislated generic by-laws or should schemes pass their own by-laws for the control management of lots in the scheme and the use of common areas?
- ▶ Or Generic by-laws as default position unless and until a scheme passes its own by-laws

What should be included in by-laws?

- ▶ Owners duty to repair and maintain his lot
- ▶ Use of common property by lot owners
- ▶ Manner in which common property should be managed and maintained
- ▶ Meetings of lot owners
- ▶ Voting rights of lot owners
- ▶ The establishment of executive committee and its terms of engagement
- ▶ Enforcement of the by-laws
- ▶ Mechanisms for dispute resolution

Other Community Concerns

- ▶ Actions of manager or caretaker
- ▶ Non-observance of rules agreed upon by owners
- ▶ Financial costs to the owners
- ▶ Laundry displayed on balconies
- ▶ Noise
- ▶ Parking
- ▶ Pets
- ▶ Renovations within an individual owner's lot process for owners wanting to make external changes to their building.
- ▶ Repairs and maintenance of common property

Other Community Concerns

- ▶ Rubbish
- ▶ Setting of maintenance levies
- ▶ Short-term letting
- ▶ Smells (including smoking complaints)
- ▶ Use of common property
- ▶ Abandoned goods such as cars on common property
- ▶ Trees on lots that pose a risk or are damaging common property lot?

Funding Capital Works

Should schemes be required to have a compulsory sinking fund instead of special levies (cess) for the funding of capital works?

Dispute Resolution

- ▶ Internal process established by schemes?
- ▶ Mediation ?
- ▶ Tribunal established by law?
- ▶ Appeals tribunal established by law?



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Role of Developers

Should the legislation impose on the Developer any obligations to put in place any regime for the management or governance of the scheme?

Lets talk!!!!!!



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