

Frequently Asked Questions (FAQs)

GATED COMMUNITY AND GUARDED NEIGHBOURHOOD PLANNING GUIDELINES

THE DEFINITION OF GATED AND GUARDED COMMUNITY

1. 'Gated Community' (GC) definition?

GC is defined as a group of residents or community who live in a guarded fenced area whether in high-rise property such as apartment, condominium and town-house or in landed property such as bungalow, terrace or detached houses. However, the understanding of 'gated community' in Malaysia is more focused on groups of residents or community who live in landed property with strata title. The development of GC is consistent with the provisions of section 6 (1A) of the Strata Titles Act 1985 (Act 318)

2. 'Guarded Neighbourhood' (GN) definition?

GN is defined as a residential area controlled in whole or in part in the scheme of the existing housing or new land holdings with individual land title. GN scheme provides with or without guard security services. In terms of the law, it cannot have physical barriers on public streets and enforce any entry and exit restrictions to the residents and the public.

The presence of GN is not based on the provisions of any law or regulation. It only exists on an 'ad-hoc' basis with the agreement of residents in a neighbourhood to make their neighbourhood a guarded area.

USE OF GUARD AND RESTRICTIONS AT THE ENTRANCE

3. Is it an offence to use a security guard at the entrance of residential areas?

The use of guards to regulate the safety of individual home or certain residential areas in some housing schemes is not contrary to the law, provided that they comply with the requirements / conditions set by the Ministry of Home Affairs (KDN). There was a special circular formulated in 2006 by the Ministry of Home Affairs, ie Private Agency Circular Bil. 1 Year 2006 and Private Agency Circular Bil. 2 Year 2006.

(Please refer to: moha.gov.my)

4. What can be done to address the widespread problem of restrictions to prevent the public from entering housing areas which are not developed under the Strata Titles Act 1985 (Act 318)?

The existing laws of the Road Transport Act 1987 (section 80) and the Street, Drainage and Building Act 1974 (section 46 (1)) explicitly prevents the installation of barriers at the entrance or in public access areas, including the lane edge and alley behind the residence. The only obstacle allowed is in the form of temporary physical restrictions, such as 'manual boom gate', safety cones and signs that can be considered to be installed or placed in a specific location at the entrance facing the guard, provided there are security guards on duty for 24 hours.

At the same time, security guards who are appointed shall not restrict or prevent the entry of occupants or the public to the housing scheme which is not 'landed strata'. The current practice of requiring the public to submit identification documents (especially the driving license and identity card) is not consistent with the provisions of the law. In this case, the occupants or the public should report to the authorities, especially the police.

5. What is the action taken against Residents Association for closing the streets and back lanes in residential areas that affect the movement of people as well as ambulance, police patrol and fire fighters?

As described, the closure of the back alley / lane edge is an offence under the Road Transport Act 1987 and the Street, Drainage and Building Act 1974. In this case, the occupants or the public should report to the local authorities concerned.

6. Does the Government have a policy to deal with restrictions on public roads that are excessive and against the law?

To address this problem in the long term, the Ministry of Housing and Local Government (KPKT) has suggested that local authorities formulate By-Laws (By-Laws) to facilitate enforcement carried out on neighbourhood resident associations that operate or act against the provisions of the By-Laws or the provisions of other laws in place.

CONTROL OF ESTABLISHMENT FOR GUARDED NEIGHBOURHOOD (GN)

7. Currently, there are GN schemes operating at public facilities and business areas. Is it allowed?

The draft guidelines strictly do not authorise the establishment and operation of GN in a neighbourhood where there are components of public facilities such as schools, mosques, community halls and so on, and if it is the public bus transportation routes.

8. What if there are people who disagree with the establishment of the GN scheme. Can the residents' association prevent their entry into their residential property?

The draft guidelines have outlined that any proposal to establish GN has to obtain the approval of majority of people (heads of households), subject to no coercion and pressure on people who do not agree. In this case, people who disagree should not be forced to pay maintenance fees or for security guards.

PROBLEM BUILDING THE GUARD HOUSE

9. Can the guard house be built on a public access road, especially in the middle of the main entrance, in the GN scheme?

The draft guidelines do not allow the construction of guard houses in the middle of the main entrance of the GN scheme area. Guard houses are only allowed to be built at road shoulder and should not obstruct traffic. If the proposed guard house building is a permanent structure, applicants (residents' association) need to apply for approval of the Temporary Occupation License (TOL) from the District Land Office (PTD) concerned. This rule is consistent with the provisions of section 65, the National Land Code 1965 (Act 56).

Guard house size must not exceed 1.8 meters X 2.4 meters. The proposed guard house designs must be submitted to the Local Authority (Building Division) for a temporary permit or approval for the construction of a guard house. Guardhouse can be built only after obtaining a temporary construction permit or approval from local authorities.

PERIMETER FENCING

10. Is perimeter fencing allowed at areas within the GN scheme?

The guidelines do not allow the construction of the fence (perimeter fencing) around the boundary of the GN scheme neighbourhood. This is because the installation of fences in the area of GN involves public road reserves, unlike the GC scheme which is built on private land (the main lot of 'landed strata').

ENFORCEMENT ON EXISTING GN SCHEME

11. Will action be taken on existing guarded neighbourhood schemes that are operating against the draft guidelines?

The guidelines for Gated Community and Guarded Neighbourhood approved by the Cabinet and MNKT, are generally applicable to the new GN schemes. For the old scheme, action such as the demolition of fences, guard houses and automated boom gate will not be done immediately and in a hurry. Action will be carried out selectively on the existing GN scheme that install barriers to obstruct the movement of residents and to prevent the entry of authorities' vehicles, particularly fire fighters and ambulance. In this case, local authorities

need to play an effective role effectively so that the current issues will not cause further difficulties or affect the public's safety and peace.

12. When will the laws or regulations relating to gated and guarded communities in residential areas be effective?

So far, the federal government does not intend to enact a special law relating to the GN scheme. The drafting of the guidelines is seen to be sufficient to drive the State Authority, local authorities, relevant agencies, developers and residents' associations in developing the GC scheme and establishing the GN scheme. However, the government (through KPKT) will refine the matters relating to the drafting of by-law (By-laws) by the local authorities to ensure that the processes, procedures and enforcement actions can be made more effective.

At the federal level, the draft guidelines are to be enforced on the date of approval by the National Council for Local Government (MNKT) which is on 2nd September 2010. However, it will involve a process of gradual adoption by the state authorities in Peninsular Malaysia and the authorities in the Federal Territory. At the state level, these guidelines will be presented at the Meeting of the State Planning Committee in each state to be adopted and enforced at the state level and the local authorities.

PROBLEM WITH MAINTENANCE FEES

13. Is there a system to ensure transparency and Residents' Association and Gated Community as well as to prevent embezzlement of Residents' Association' funds and the abuse of power by committee members?

Matters relating to the transparency of Residents Association of 'Gated Community' and prevention of embezzlement of residents' association funds are not outlined in the guidelines that have been enacted. However, some of the issues raised have been dealt with in the Building and Common Property (Maintenance and Management) Act 2007 (Act 663) which apply legislatively to the development and management of the 'gated community' that is developed under the Strata Titles Act 1985 (Act 318).

In this case, members of residents' association can lodge a complaint or report to the relevant authorities according to existing law, if there is evidence of fraud and abuse of power by the appointed residents' association.

Note: The list of FAQs above refers to questions that are frequently asked by the public, residents' associations and the media as well as questions raised in the House of Representatives and the Senate during the years 2009-2010.

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