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## A Harder Case For Hardship: A Strata Owner's Guide To Ministerial Order M195 June 25, 2020

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### **To rent or not to rent?**

That may well be the question on many strata lot owners' minds these days who are facing significant financial difficulties due to COVID-19. For those living in a strata corporation with a rental prohibition or rental restriction bylaw, the *Strata Property Act* opens the door for those owners to apply to their Councils for an exemption on the basis of "hardship." With the arrival of Ministerial Order M195 on June 24, 2020, however, the question of whether or not to seek that exemption just got harder.

### **Testing the Limits**

A hardship exemption is not an easy bylaw exemption to obtain. In order to sidestep the application of a rental prohibition or restriction bylaw, owners must demonstrate "hardness of fate or circumstance; severe toil or suffering; extreme privation" to be eligible. Whether or not circumstances amount to hardship must be assessed on the facts of each particular case. In all cases, however, the Council's assessment must be carefully considered, fair, and in accordance with their duty of care. The Council must not prejudge the issue before the hardship hearing or before reviewing the hardship application. In short, Councils must keep an open mind before closing the door on any rentals.

The BC Supreme Court decision *Als v. Strata Corp. NW 1067*, 2002 BCSC 134, established a set of conditions and tests that apply to strata councils when they are considering a hardship application and the requirements of the applicants to provide documentation or evidence for the request.

### **Going Viral**

Since BC declared its state of emergency as a result of the COVID-19 pandemic, strata lot owners across the province have been feeling the financial impact. Loss of

employment or diminished employment opportunities have caused many owners to consider whether or not to rent all or a portion of their property as a means of income. However, with the introduction of Ministerial Order M089 on March 30, 2020, followed by its replacement Order M195 on June 24, 2020, the value of a successful hardship application may be lost.

### **Ministerial Order M195**

As with Ministerial Order M089, Ministerial Order M195 enacts various pandemic-related protections for residential tenancies governed by the *Residential Tenancy Act*. One of the most sweeping protections is with respect to its prohibition against evicting tenants for unpaid or late paid rent during the state of emergency. Although this new Order allows landlords to issue eviction notices for other matters (once banned under Ministerial Order M089), the very purpose of a hardship rental has been vacated: the rent.

### **Penny for your Thoughts**

As a result of Ministerial Order M195, an owner considering whether or not to bring a rental hardship application to their Councils should be especially cautious. Until the legal landscape offers easier terrain for landlords unable to obtain rent from their tenants, owners must remain mindful that a successful hardship application may result in further financial loss at the end of the day.