

Guide 15: Rentals Permitted within a Strata Corporation

For strata corporations without rental restriction bylaws, residential strata owners generally may rent their strata lots.

For strata corporations with rental restriction bylaws, rentals generally may still occur as follows:

- to family members (as defined by the Act, see part 1 of this guide);
- for a hardship exemption (see part 2 of this guide); and
- as permitted under a Rental Disclosure Statement (Form J, please see part 3 of this guide for more information).

Note: in addition to strata bylaws, there may also be applicable local government zoning which could restrict rentals. Zoning information is available from the local government, such as a municipality, where the strata lots are located.

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The guides are provided for the reader's convenience; they are not a substitute for professional advice including legal advice. Please note: the Standard Bylaws can be amended.

1. Rental to a Family Member

A rental restriction bylaw does not apply to prevent the rental of a strata lot to a family member. Under the Act, a family member is defined as:

- a spouse of the owner;
- a parent or child of the owner; or
- a parent or child of the spouse of the owner.

A “spouse of the owner” includes an individual who has lived and cohabited with the owner for a period of at least two years at the relevant time, in a marriage-like relationship including a marriage-like relationship between persons of the same gender.

A rental to a family member creates an assignment of the owner’s powers and duties under the Act, Regulations, bylaws, and rules.

[For more information on rentals, including rentals to family members, please refer to “*Guide 6: The Role and Responsibilities of Tenants and Landlords*”.]

2. Exemption for Hardship

An owner may apply to the strata corporation for an exemption from a rental restriction bylaw on the grounds that the bylaw causes hardship to the owner. Please note, neither the Act nor the Regulations define “hardship” although there have been some court rulings.

An application for the hardship exemption must:

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- be made in writing;
- state the reason why the owner thinks an exemption should be made; and
- indicate whether the owner wishes a hearing.

The Regulations provide that a “hearing” means “an opportunity to be heard in person at a council meeting”.

When a hardship application has been made, the strata council must:

- hear the owner or owner’s agent within four weeks of the date of the application, if the owner requests a hearing;
- give its decision in writing to the owner within one week of the hearing;
- give its decision in writing within two weeks after the owner applied for the exemption if no hearing is held or requested.

If the strata council fails to provide its decision within the time specified, or fails to hold a hearing within four weeks after the date the application is given to the strata corporation, the exemption is allowed, and the owner would be permitted to rent the strata lot.

- An exemption granted by the strata corporation may be for a limited time.
- The strata corporation must not unreasonably refuse to grant an exemption.

3. Rentals which are permitted under a Rental Disclosure Statement (“Form J”)

Rental disclosure statements are filed by the Owner Developer. Under the Act, Owner Developers must provide prospective purchasers with a “Rental Disclosure Statement” (Form J) which has been filed with the Superintendent of Real Estate, if the Owner Developer intends to rent or preserve the right to rent any of the residential units.

The Form J:

- describes the strata lots which may be rented; and
- sets out the date during which the rentals may occur.

The effect of Form J depends on when it was filed.

- A. For Rental Disclosure Statements filed on or before **December 31, 2009** a lot that has been designated as a rental lot by the Owner Developer on Form J remains eligible as a rental lot (regardless of rental restriction bylaws) until the lot is either conveyed by the first purchaser or the date on the Rental Disclosure Statement expires (whichever occurs first).

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For the Owner Developer or the first purchaser from the Owner Developer, the effect of the Form J is to preserve the right to rent the strata lot for the length of time set out in the Form J (filed on or before December 31, 2009) regardless of any subsequent rental restriction bylaws.

For Rental Disclosure Statements filed on or before **December 31, 2009** a purchaser who buys the strata lot from someone other than the Owner Developer does not have a right to rent the strata lot. In such circumstances, the strata lot may only be rented by a subsequent purchaser if:

- there is no rental restriction bylaw;
- the owner is permitted to rent despite a rental restriction bylaw on the basis of:
 - the family member exception;
 - a determination of hardship by the strata council;
 - the provision which delays the application of a rental restriction bylaw.

- B. For Rental Disclosure Statements filed on or after **January 1, 2010** the ability to rent a strata lot will be established at the time of filing by the developer. A strata lot eligible as a rental remains designated as a rental until the date the rental period expires (as per Form J, the Rental Disclosure Statement) and is not affected by any subsequent rental restriction bylaws.

This means the right to rent a strata lot continues from one purchaser to the next, if the rental period on the Form J remains unexpired. This applies to Rental Disclosure Statements filed on or after **January 1, 2010**.

4. **What is a Rental Restriction Bylaw?**

Given the factors governing strata lot unit rental discussed above, a strata corporation may develop and pass a rental restriction bylaw in order to:

- limit the number of strata lots that may be rented; or
- limit the length of time the strata lots may be rented.

A bylaw that limits the number of strata lots that can be rented must also set out the procedure to be followed in administering the limit.

A rental restriction bylaw cannot prevent, or include within the limit:

- rentals to family members; and
- rentals permitted on the basis of hardship.

5. Phasing in Rental Restriction Bylaws

If a rental restriction bylaw is passed, any owner with a rented strata lot subject to the new bylaw has time to adjust.

The Act contains a delayed application provision with respect to those strata lots affected by rental restriction bylaws and a rental restriction bylaw would not apply to these strata lots until the later of:

- one year after a tenant who is occupying the strata lot at the time the bylaw is passed ceases to occupy it as a tenant; or
- one year after the bylaw is passed.

6. Strata Corporations and Tenants

The strata corporation cannot:

- screen tenants;
- establish screening criteria;
- require that it approve of tenants; or
- require the insertion of terms in tenancy agreements or otherwise restrict the rental of a strata lot except by a bylaw that limits the rental of residential strata lots.

7. If the Rental of a Strata Lot Violates the Rental Restriction Bylaw

If the strata lot owner has rented despite being subject to a rental restriction bylaw:

- the strata council can proceed to fine the strata lot owner as long as the maximum amount of the fine is set out in the bylaws;
- the maximum amount which can be set out in a bylaw for a breach of a rental restriction bylaw is \$500;
- the bylaws may provide that a fine will be re-assessed for a continuing breach to a maximum frequency of every seven days;
- the Act specifically provides that the tenant is not in contravention of the bylaw; and

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- the Act provides the tenant with the right to end the tenancy agreement within ninety days of learning of the breach of the bylaw by the strata lot owner and the landlord must pay the tenant's reasonable moving expenses to a maximum of one month's rent if the tenant ends the tenancy agreement within ninety days of learning of the breach.

References:

Sections of the Act:

130, 132, 139 – 144

Sections of the Regulations:

4.01, 7.1, 8.1, 8.2

Please also see

- Strata Property Act "*Guide 6: The Roles and Responsibilities of Tenants and Landlords*"
- Strata Property Act "*Guide 25: What to Know About Resolving Complaints*"