

Condominium Home Owners Association

A non-profit association serving strata owners since 1976

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Many strata corporations have age restriction bylaws. There are practical and legal considerations to take into account when a strata council is deciding whether to put an age restriction bylaw to a $\frac{3}{4}$ vote of the owners.

The first step is for the strata council to assess whether an age restriction bylaw is right for their strata corporation. The strata council should take some time to consider both the present and future residents of the complex. If the strata complex is reserved for the use of residents 55 years of age and older will this have an impact on the number of owners willing to serve as strata council members? In some retirement complexes, many owners are away for the winter and this makes it difficult for them to be active strata council members. Strata complexes close to schools and playgrounds attract families. It may be appropriate to have an age restriction bylaw if the strata complex has adult recreational facilities, is near shopping, and is linked to public transportation but there are no playgrounds or schools nearby. Will the age restriction bylaw increase or decrease the purchase price of the suites in the building? In assessing the impact an age restriction bylaw will have on the value of the suites, the strata council may wish to consult a realtor.

If the strata council decides that an age restriction bylaw would benefit the strata corporation, they should consult their condominium lawyer. If an owner challenges the bylaw in court, the judge will take into account whether it meets the requirements of the *Strata Property Act* ("Act"), the *Human Rights Code* and other federal and provincial legislation. If the age restriction bylaw does not meet these requirements, the judge may find the bylaw to be unenforceable.

The *Act* itself imposes few limitations on the ability of strata corporations to enact age restriction bylaws. It allows strata corporations to enact age restriction bylaws as long as they do not contravene the *Act*, the Regulations, the *Human Rights Code* or any other enactment or law. The *Act* provides that a bylaw that restricts the age of persons who may reside in a strata lot does not apply to a person who resides in the strata lot at the time that the bylaw is passed and who continues to reside there after the bylaw is passed.

However, the provisions of the *Human Rights Code* present more of a challenge. There are many factors a judge will take into account when deciding whether an age restriction bylaw meets the requirements of the *Human Rights Code*.

Section 9 of the *Human Rights Code* lists grounds of discrimination that are prohibited when the sale of land (such as purchasing a condominium) is involved. Section 9 of the *Human Rights Code* prohibits discrimination against persons purchasing property on the basis of marital status but not on the basis of age.

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Section 10 of the *Human Rights Code* lists grounds of discrimination that are prohibited when a landlord is choosing a tenant. Included in the list of prohibited grounds of discrimination is age. Therefore, a landlord cannot discriminate against tenants on the basis of age. In the *Human Rights Code* age is defined as an age of nineteen (19) years or more and less than sixty-five (65) years. At first glance it appears that a strata corporation could enact an age restriction bylaw that prohibits those under the age of 19 years from residing there. However, discriminating against tenants on the basis of family status is also prohibited by section 10 of the *Human Rights Code*. There is no definition given in the *Human Rights Code* for “family status”. However, refusing to rent to parents with young children would likely be found by a judge to be discrimination on the basis of family status.

There is an exception in the *Human Rights Code* concerning discrimination on the basis of age regarding rental premises. The exception is for premises reserved for the use of individuals 55 years of age and older. The *Human Rights Code* provides that restrictions as they relate to family status or age do not apply “...if the space is a rental unit in residential premises in which every rental unit is reserved for rental to a person who has reached 55 years of age or to 2 or more persons, at least one of whom has reached 55 years of age...”

Even if a strata corporation has a bylaw that prohibits rentals, tenants are always a possibility because an owner must be allowed to rent his or her suite if he or she is under hardship. In my opinion, it does not make sense to apply an age restriction to owners that reside in the building that does not apply to tenants. The question of whether age limits can be imposed on owner/residents that do not apply to tenants will undoubtedly be decided by a judge of the Supreme Court of British Columbia someday. Therefore, strata corporations who wish to enact an age restriction bylaw now should consider setting the age limit at fifty-five years of age and older. Exceptions should be made for spouses and visitors. A bylaw with an age limit of fifty-five years was found to be enforceable by the Supreme Court of British Columbia in *Marshall v. Owners, Strata Plan NW 2584 (1996), 27 BCLR (3D) 70*. Strata corporations should not only have their age restriction bylaws drafted by a lawyer but the bylaw should be reviewed by a lawyer from time to time as judges will give more direction in the coming years about what age restrictions can be legally enforced by strata corporations

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