

# Condominium Home Owners Association

A non-profit association serving strata owners since 1976

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## Headline: **Rental Restrictions**

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While the *Strata Property Act* permits a strata corporation to prohibit rentals outright, it hampers the ability of a strata corporation to impose rental restrictions. Pursuant to the new *Act*, a strata corporation may not screen prospective tenants, establish any screening criteria, approve tenants or require owners to seek the council's approval of tenants. A strata corporation may not require any specific terms to be inserted in a tenancy agreement or to otherwise restrict the rental of a strata lot.

A strata corporation may, by bylaw, prohibit rentals completely or limit the number (or percentage) of residential strata lots which may be rented. A strata corporation may also limit, by means of a bylaw, the period of time for which residential strata lots may be rented. However, a bylaw that limits the number (or percentage) of residential strata lots that may be rented must set out the procedure to be followed by the strata corporation in administering the limit. For example, who in the strata corporation will receive requests to rent and what is the timeframe within which the strata corporation will respond to a rental request.

### Family members

If a tenant is a family member of the strata lot owner's family, the rental of the strata lot is excluded from the operation of the rental restriction bylaw, even where rentals are prohibited and regardless of whether the number of rentals permitted would be exceeded by a rental to a family member.

A family member is defined in the Regulations to the *Act* as a spouse of the owner, a parent or child of the owners or a parent or child of the spouse of the owner. Spouse of the owner includes an individual who has cohabited with the registered owner anywhere for a period of at least 2 years in a marriage-like relationship and includes persons of the same gender.

### Existing Tenants

If a rental restriction bylaw is passed and properly registered in the applicable Land Title Office, the bylaw does not act to terminate an existing tenancy. The tenant occupying a strata lot at the time of the passage of the rental restriction bylaw may remain as a tenant. The bylaw will begin to apply to a leased strata lot one year after that tenant, who was occupying the unit when the bylaw came into force, ceases to be a tenant of that strata lot or one year after the bylaw is passed, whichever is later. So, if a tenant occupied the strata lot when a rental restriction bylaw was passed and the particular tenant remains for 5 years, the bylaw will apply to the strata lot one year after the tenant moves out. In this one year gap, the strata lot may be rented to another, but for only that portion remaining of the one year.

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A strata lot that is not tenanted at the time a rental restriction bylaw is registered is not subject to the rental restriction bylaw until one year after the bylaw is passed. This means that every owner without a tenant has a year to comply with the rental restriction bylaw and in that waiting period, the strata lot may be rented.

#### First purchasers

A strata lot designated to be a rental strata lot by an owner developer in a Rental Disclosure Statement which is owned by a person who purchased from the owner developer (i.e. a first purchaser) is exempt from a rental restriction bylaw until the date the strata lot is sold by the first purchaser or the expiry date found in the Rental Disclosure Statement, whichever comes first.

However, the exemption conferred on a first purchaser may be extended to a second purchaser, if a tenant occupies that strata lot when the rental restriction bylaw was brought into existence and the same tenant occupies that strata lot when the strata lot is sold, but the period in the Rental Disclosure Statement has not expired. In other words, if the strata lot is occupied by a tenant and the period in the Rental Disclosure Statement has not expired and the strata lot is sold by the first purchaser to another, the rental restriction bylaw will not begin to apply to that strata lot until one year after the occupying tenant moves out provided that the tenant was in the strata lot at the time the rental restriction bylaw was passed.

Similarly, if the rental period reserved to the owner developer in the Rental Disclosure Statement expires before the conveyance of a strata lot by a first purchaser and there is no tenant occupying the strata lot when the rental restriction bylaw is brought in, the rental restriction bylaw will begin to apply to the strata lot one year after the date of passage of the bylaw. However there may or may not be any time left in which to rent.

#### Second Purchasers

If a first purchaser of a strata lot sells a strata lot and that strata lot was designated as a rental strata lot in a Rental Disclosure Statement under the Condominium Act, a bylaw that prohibits or limits rental does not apply to that strata lot until the date the rental period expires as provided in the Rental Disclosure Statement, or January 1, 2006, whichever is earlier. This exemption may be further extended because its application is subject to the occupation of that strata lot by a tenant who was in the strata lot when the bylaw took effect as described above. If there is no tenant at the time of the passage of the bylaw, there will be a delayed application of the rental restriction bylaw for one year from the date of the passage of the bylaw.

#### Hardship

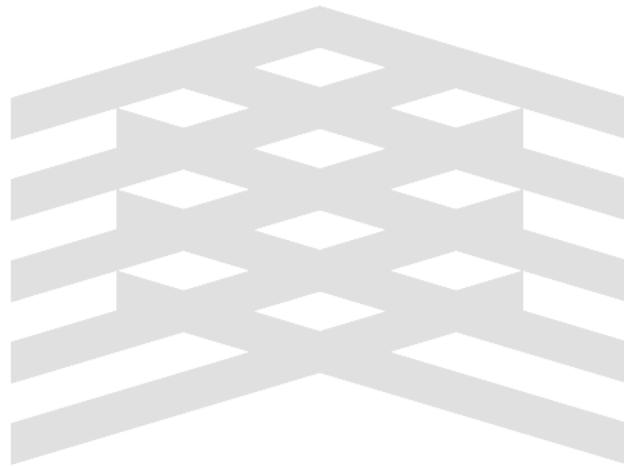
An owner may apply to a strata corporation for an exemption from a bylaw that prohibits or limits rental on the grounds that the bylaw causes hardship to the owner. The hardship application must be in writing and must state:

1. The reasons the owner thinks the strata lot should be exempt; and
2. Whether the owner wishes to have a hearing.

If the owner wants a hearing, the strata corporation must hear the owner (or the owner's agent) within 21 days after the date the application is given to the strata corporation. A hearing means an opportunity to be heard in person at a strata council meeting.

The strata council has one week from the date of the hearing to provide a written response to the owner. If, after a hearing, the strata corporation does not give its decision in writing to the owner within one week, the owner is exempt from the rental restriction bylaw and may rent the strata lot. If the owner does not request a hearing, but applies for consideration under hardship in writing, the strata corporation must give its decision in writing within 14 days after the written application to rent is given to the strata corporation. If the strata corporation does not respond in writing to the applicant owner within two weeks after the application is given to the strata corporation, then the owner is permitted to rent.

As part of the hardship application, the strata corporation may limit the period for which a strata lot is exempt from a rental restriction bylaw, but the strata corporation must not unreasonably refuse to grant an exemption.



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