

Condominium Home Owners Association

A non-profit association serving strata owners since 1976

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One of the most difficult tasks a council has to perform is enforcing bylaws. This task is even more difficult when it is a rental bylaw that needs to be enforced. There are several provisions in the Strata Property Act ("Act") that delay the ability of a council to enforce a rental bylaw against all owners, or certain owners. There are also several provisions setting out exemptions whereby a strata lot may be rented out despite a valid rental bylaw. The following article sets out the delay provisions and the exemptions found under the Act dealing with rental bylaws. Councils may wish to consider developing a written policy, whereby owners are advised of how the delaying provisions and the exemptions apply to their rental bylaws. Given that the Regulation to the Act provides that one of the delaying provisions expires, at the latest on January 1, 2006, it is timely for councils to advise owners of their obligations with respect to rental bylaws this fall.

The first delaying provision is set out in section 143(1) and provides that rental bylaws do not come into force immediately. A rental bylaw does not apply 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 and one year after the bylaw is passed. In other words, if a strata corporation does not have a rental bylaw and then passes and registers one, the rental bylaw does not become enforceable against any owner until one year after the bylaw is passed. An owner who had a tenant living in his strata lot at the time the bylaw is passed can continue to rent the strata lot until one year after that tenant moves out. As a result, if the tenant stays for twenty years, the owner can continue to rent for twenty-one years.

The second delaying provision is found in section 143(2) of the Act and it deals with rental disclosure statements. Rental disclosure statements are prepared by the owner developer and provide information about the developer's intention to rent. They are filed in the office of the Superintendent of Real Estate and not in the Land Title Office. Not all strata corporations have rental disclosure statements and the wording of the statements vary.

Pursuant to section 143(2), owners who purchase strata lots subject to rental disclosure statements, and who are the first purchasers of their strata lot, are exempted from rental bylaws for the duration of the rental period disclosed on the rental disclosure statement. This exemption applies whether the rental disclosure statement was filed pursuant to the Act or its predecessor, the Condominium Act. For instance, if the rental disclosure statement sets out that the owner developer reserves the right to rent for 15 years after the date of the rental disclosure statement, then first purchasers can also rent for 15 years, regardless of which statute was in force when the rental disclosure statement was filed.

For rental disclosure statements filed pursuant to the Condominium Act, a further delaying provision applies. Section 17.15 of the Regulation to the Strata Property Act provides:

Despite section 143 (2) of the Act, but subject to section 143 (1) of the Act, if a strata lot is conveyed by the first purchaser of the strata lot, and the strata lot was designated as a rental strata lot on a rental disclosure statement in the prescribed form under section 31 of the Condominium Act and all the

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requirements of section 31 of the Condominium Act were met, a bylaw that prohibits or limits rentals does not apply to that strata lot until the earlier of:

- (a) the date the rental period expires, as disclosed in the statement;
- (b) January 1, 2006.

If the rental disclosure statement complies with the requirements of the Condominium Act, then owners who did not purchase from the owner developer can rent their strata lots until the earlier of the expiration of the term on the rental disclosure statement or January 1, 2006.

Many rental disclosure statements contain wording similar to the following:

2. The residential strata lots described below are under lease as of the date of this statement and the owner-developer intends to lease each strata lot until the date set out opposite its description.
3. The owner-developer reserves the right to itself and /or subsequent owners to lease any and all of the proposed strata lots for an indefinite time period.
4. There is presently no bylaw of the strata corporation which limits the number of strata lots that may be lease by the owners.

It was argued successfully in the case of *Abbas v. The Owners, Strata Plan LMS 1921* under the Condominium Act that such a rental disclosure statement did not comply with the mandatory provisions of that Act because it disclosed an intention to lease but not the period of time intended. Whether or not this decision would be followed in a future case is questionable, as it is possible that another Judge would come to a different conclusion under the Act.

There are two further exemptions to rental bylaws set out in the Act. Section 142 of the Act stipulates that rental restriction bylaws do not work to prevent the rental of strata lots to the owner's family members. Section 8.1 the Regulation to the Act defines "family member" as:

- (1) For the purposes of section 142 of the Act, "family" and "family member" mean
 - (a) a spouse of the owner,
 - (b) a parent or child of the owner, or
 - (c) a parent or child of the spouse of the owner.
- (2) In subsection (1), "spouse of the owner" includes an individual who has lived and cohabited with the owner, for a period of at least 2 years at the relevant time, in a marriage-like relationship, including a marriage-like relationship between persons of the same gender.

In other words, a strata lot owner can always rent to a family member as defined above, despite the existence of a rental bylaw.

The last exemption from rental bylaws deals with hardship. Section 144 of the Act stipulates that where a rental bylaw causes hardship to an owner, that owner may apply to the strata corporation for an exemption from that rental bylaw, and the strata corporation cannot unreasonably refuse to grant the exemption. The owner seeking the exemption must make his or her application in writing stating the reason the owner thinks that an exemption should be made, and whether the owner wishes to have the strata council hear the issue. The council must hear and decide the issue within strict time periods.

It must be kept in mind that the above summary does not address all issues that might play a role in enforcing a rental bylaw. For example a strata corporation's previous practice of enforcing a rental bylaw and the wording of the bylaw itself may play a role in when it can be applied. It is helpful for councils to consult a lawyer when developing a rental bylaw policy.

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