

# Condominium Home Owners Association

A non-profit association serving strata owners since 1976

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## Headline: **Can an Owner be Evicted for Breaching Strata Corporation Bylaws?**

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Strata councils are sometimes faced with complaints about one owner who is frequently breaching the bylaws of the strata corporation. Sometimes, in partial jest, I am asked by a council member if an owner can be evicted from the strata complex. Well, one strata corporation in Alberta went to court and a woman who held title to a strata lot was ordered by the Judge to vacate her strata lot. Although Alberta has different laws regarding condominium matters than we do, there is a possibility that under the right circumstances a Supreme Court of British Columbia Judge will order that an owner that is contravening reasonable and significant bylaws of a strata corporation must vacate his or her strata lot. I will now review the facts of the Alberta case of *Condominium Plan No. 022 1347 v. N.Y. [2003] A.J. No. 1227*, which sound very similar to what several British Columbia strata corporations are facing right now.

In the Alberta case, the owner, referred to by the Judge as N.Y., was not a model resident. According to the written complaints received by the Strata Corporation and the property manager there was noise coming from her strata lot, she was obstructing the passageways of the complex, her pet was damaging the common property, she was not cleaning up after her pets or keeping her pets on a leash, she spoke to owners, occupants and their visitors in a derogatory manner and she allowed her visitors to trespass in parking areas that other owners had the right to occupy exclusively.

She was renting the strata lot from her parents and she and her parents were served with a Notice of Termination of Tenancy. The tenancy was terminated on May 31, 2003. She failed to vacate the premises. Instead, she purchased the strata lot from her parents in mid June 2003 for \$67,000, which was a very good price because the condominium was valued at \$140,000.00.

The Strata Corporation brought proceedings in Court to evict N.Y. On June 19, 2003 N.Y. had notice of the application, but did not appear in front of the Master. The Master found that N.Y. was an owner. He ordered that she vacate the premises by July 15, 2003. N.Y. then appealed the decision of the Master to a Judge. The Judge in the appeal found that N.Y. had shown flagrant disregard for the bylaws of the Strata Corporation. He further found that, based on the law in Alberta, the Master had discretion to order her to vacate the premises.

The Judge also considered the fact that the strata lot had been sold for practically nothing. He inferred that the strata lot was transferred for the sole purpose of defeating enforcement of the eviction. He further found that there was a rebuttal presumption that she was holding the property in trust for her parents. N.Y. did not provide evidence that the property was a gift, so the Judge found that the strata lot was being held by N.Y. in trust for her parents. The Judge found that she was in fact a tenant, not an owner, and granted an order evicting her. He further found that even if he was wrong in his conclusions, an injunction should be granted requiring that N.Y. not commit any further breaches of the bylaws.

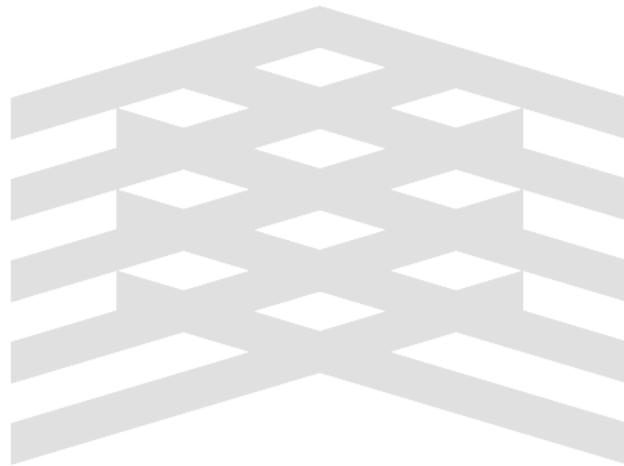
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In my opinion, even though the law in B.C. is different than the law in Alberta, it is possible that a Supreme Court of British Columbia Judge may be willing to order an owner to vacate a strata lot because he or she has substantially breached the bylaws. Also, a Supreme Court of British Columbia Judge may be willing to recognize that a purchase of a strata lot is a sham done solely to avoid an eviction or the enforcement of a rental bylaw. Certainly if a strata corporation in British Columbia has obtained a Court injunction to stop an owner from continuing to contravene a reasonable and significant bylaw of the strata corporation and the owner continues to breach the bylaw, the strata corporation should consider retaining a lawyer to review the possibility of asking a Judge to order that the owner vacate his or her strata lot.



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