

**Headline: The Case of the Review of the Rental Disclosure Statement**

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Who is exempted from a rental restriction or prohibition bylaw ("rental bylaw") has created confusion and some uncertainty for strata corporations. A recent Court decision has however clarified the exemption.

The *Strata Property Act* provides that a rental to a family member is exempt from a rental bylaw. Additionally, an owner may apply for an exemption from a rental bylaw if the bylaw causes hardship to the owner.

Section 143 of the *Strata Property Act* also creates an exemption by providing that, if a strata lot has been designated on a Rental Disclosure Statement, a rental bylaw does not apply to the strata lot until the earlier of:

- the date the strata lot is conveyed by the first purchaser of the strata lot, or
- the date the rental period expires as disclosed in the Rental Disclosure Statement.

Section 143 operates to create an exemption for developers and purchasers who purchase from the developer provided that the rental period as disclosed in the Rental Disclosure Statement has not expired.

The ability of first purchasers to rent their strata lot was impacted by the 2000 decision of *Abbas v. The Owners, Strata Plan LMS 1921*. In *Abbas*, the developer had provided that the Rental Disclosure Statement was valid for an "indefinite period" rather than providing a specific date for the Rental Disclosure Statement to expire. The Judge in *Abbas* found that by providing for an indefinite period the developer had failed to comply with the requirements of the *Condominium Act*, which was the legislation in force at the time that the Rental Disclosure Statement was prepared. The result was that the Judge found the Rental Disclosure Statement to be invalid.

Many strata corporations have since applied the *Abbas* decision and refused to permit purchasers from developers to rent their strata lot in cases where the developer used expressions such as "indefinite" or "unlimited" for expiry periods in the Rental Disclosure Statement.

The recent decision of *Spagnuolo v. The Owners, Strata Plan BCS 879* overturned the *Abbas* decision. The *Spagnuolo* decision held that a Rental Disclosure Statement that referenced an "unlimited period" is a valid Rental Disclosure Statement.

The *Spagnuolo* decision now makes it clear that the developer and purchasers from the developer are entitled to rent their strata lot until the sale of the strata lot by the first purchaser unless the Rental Disclosure Statement has expired. A Rental Disclosure Statement that contains a reference to "unlimited," "indefinite" or any other such phrase as the expiry date for the Rental Disclosure Statement is valid and developers and first purchasers are permitted to rent their strata lots until the sale of the strata lot by the first purchaser from the developer.

Strata Corporations that have attempted to prevent developers or first purchasers from renting their strata lots on the basis that the Rental Disclosure Statement did not contain a date may wish to obtain legal advice in view of the *Spagnuolo* decision.

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In addition to the *Spagnuolo* decision, the amendments to the *Strata Property Act* have also had an impact on the application of rental bylaws. Although existing strata corporations are not affected by this change, an amendment to the *Strata Property Act* Rental Disclosure Statement form (Form J) requires that for all Rental Disclosure Statements filed after January 1, 2010, the Rental Disclosure Statement must have a date.

Additionally, the amendment to the *Strata Property Act* provides that a Rental Disclosure Statement is valid until the expiry date set out in the form. The effect of this amendment is that it permits all purchasers, not just purchasers from the developer, to be able to rent their strata lot until the Rental Disclosure Statement expires.

For existing strata corporations however, the *Spagnuolo* case applies.