
Banning Airbnb, VRBO, and short-term rentals: What Strata Corporations Need to Know

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Rarely does a week go by that I don't get a call or email about short-term rentals. Mostly, they are inquiries about how to prevent owners from using the Airbnb, VRBO and other similar websites. These websites allow persons with homes ("hosts") to advertise the rental of all or part of their home at a daily, weekly or monthly rate. While the websites vary a little, they are marketed to tourists, business travelers, or even those requiring a temporary home ("guests"). A few years ago, a search for accommodations on Airbnb would yield very few results. But now, a potential guest has thousands of rooms, condos, and homes from which to choose.

This is an issue that is being experienced by strata corporations all over BC and not just tourist or resort areas. The calls come from strata corporations that permit or already restrict rentals. They usually cite concerns about insurance coverage, security, and damage. Many owners are unaware that a standard unit insurance policy does not cover damage caused by a guest. Similarly, this type of use may also be a risk not covered under the strata corporation's insurance policy. Security issues arise because of presence of strangers at a high turnover rate in the complex. The neighbours cannot identify guests from intruders. In addition, if the host owner does not ensure that keys are not copied or lost, then there exists the potential for a security breach. There is also a concern about increased wear and tear arising from the belief that the guests, having no vested interest as an owner or even a long term tenant, will be "hard" on the common property and common amenities. Finally, strata corporations worry about the impact on their communities, particularly the loss of a tight knit community.

The first place many strata corporations will turn to for help are their municipalities. Most have zoning bylaws that prohibits a residential strata lot from being used for periods less than 30 days or for hotel like purposes,

unless that strata lot forms part of a hotel (See for example, City of Vancouver's Zoning and Development Bylaw, sections 10.20.5 and 10.21.6). However, to date, the various municipalities have done little to enforce their bylaws. Despite that, I still encourage strata corporations to report these municipal bylaw violations even if only to demonstrate the extent of the problem so that it might be addressed in the future. As a result, this does leave strata corporations to deal with the issue themselves.

The starting point for a strata council is to look at the strata corporation's bylaws. In my view, the standard bylaws already prohibit short-term rentals. Standard bylaw 3(1)(d) provides that an owner, tenant, occupant or visitor must not use a strata lot in a way that is illegal. If the municipality's bylaws prohibit short-term rental uses, then the use of that strata lot for short term rentals is illegal, and therefore a contravention of the bylaws. In addition, standard bylaw 3(1)(e) provides that an owner, tenant, occupant or visitor must not use a strata lot in a way that is contrary for which the strata lot or common property is intended as shown expressly or by implication on or by the strata lot. The *Strata Property Act* contemplates only two types of strata lots, residential or non-residential. Non-residential is what most people refer to as commercial strata lots. The strata plan will indicate expressly or by implication whether the strata lots are residential, non-residential or a combination of both. Section 1 of the *Strata Property Act* defines residential as "a strata lot designed or intended to be used primarily as a residence". While residence is not defined, the court has considered its definition in the strata corporation context. In *Louis v. Strata Plan LMS 499*, the court held that a "residence" is a man's abode or continuance in a place. In addition, the court concluded that a residence has some degree of permanence rather than the transience of a tourist. Based on that analysis, short-term rentals do not

provide a guest a “residence”. As a result, the strata lot is not being used for residential purposes, which is a contravention of standard bylaw 3(1)(e).

Unfortunately, the above type of analysis is sometimes insufficient to convince owners that they are contravening the bylaws. For certain behaviours a strata corporation tries to curb, it can be more effective to have a bylaw that directly addresses the issue. Some strata corporations have tried to do that with their rental bylaws. Bylaws will say something like “the minimum period of time a strata lot may be rented is one year”. The idea being that this bylaw prohibits an owner from renting a strata lot on a daily, weekly or even monthly (if less than a year) basis. However, the difficulty in trying to enforce this bylaw is that more often than not, these strata lots are not being “rented” under a lease. In *The Owners, Strata Plan VR 2213 v. Duncan & Owen*, the owner rented the strata lot to a tenant, who offered the strata lot for rent on a short term basis. The strata corporation wanted a Form K and move in fee for each change of subtenant. However, the court concluded that since the strata lot was “rented” pursuant to a license, these guests were neither tenants nor subtenants. Because they were not owners either, they were considered “occupants” as defined in section 1 of the *Strata Property Act*. There is a large body of case law that draws a distinction between a “lease” in contrast to a license. In short, a “lease” grants the tenant the right to exclusive possession, while a license grants the right to use. It’s the difference between renting an apartment and booking a hotel room. Most of these short term rentals are not done pursuant to a tenancy agreement and the hosts and guests are not subject to the *Residential Tenancy Act* if the rental period is less than a month. Rental bylaws that set out a minimum period of time a strata lot can be rented are not effective because these types of short term rentals are not “rentals” in the traditional landlord tenant sense. Since changes in occupancy is not a contravention of rental bylaw and do not trigger the requirement to provide a Form K, a rental bylaw is not effective.

As a result, the most effective type of bylaw to prevent short-term rentals is one that specifically prohibits short-term accommodations, hotel-like uses, motel-like uses, bed and breakfasts, and another other type of

licensing arrangements. However, such a broad bylaw also has broad implications. This type of bylaw may also prevent house swaps and homestays. House swaps allow you to “trade” the use of your home with another person’s home. Homestays are students that stay in your home for the school year or semester. As a result, when a strata corporation wishes to ban short-term rentals, it should also consider what types of short-term arrangements, if any, might be acceptable for their community. Finally, given the complexity of the issues, it would be prudent for the strata corporation to obtain legal advice in the drafting or reviewing of a draft bylaw that bans short-term rentals to ensure it actually accomplishes the strata corporation’s goals.