

Condo Smarts

Headline: Rental Disclosure & Strata Property Act Amendments

Topic: Rentals & Rental Bylaws

Publication date: December 20, 2009

Publication: The Province

Written by: Tony Gioventu

Dear Condo Smarts: We purchased a condo in 2004 as an investment property with the hopes of retiring to Victoria in 2012. We were the first purchasers, and as a result were told we would be exempt from rental bylaws. We have been renting out our unit since 2006, with excellent tenants and never any complaints. We received a letter from our strata council in November advising that our rental disclosure exemption is not enforceable and that we are in violation of the bylaw that prohibits rentals. We were told that according to the Act, if we did not evict our tenants, we would be fined \$500.00 a week starting December 1st. We have received written notice of the fine and are seeking a legal opinion on how to challenge this. Anything you could tell us would be helpful. Janicka Elliott, Calgary

Dear Janicka: If the rental disclosure filed by the developer creates an exemption, it would be for a time period and define the number of units to be rented or exempted. That exemption between July 1, 2000 and December 31, 2009, applies to only the first purchaser of the strata lot and not subsequent purchasers. Your rental disclosure, like many, determines that the period of time is "indefinite." There was a court decision in April of 2000 that determined under the Condominium Act that indefinite did not comply with the legislation and was not enforceable. Based on that decision, many strata corporations have assumed that the same conditions apply to in their circumstance, but that is not necessarily the case, especially if the rental disclosure was filed under the Strata Property Act after July 1, 2000 and in light of

a court decision this week by the Honourable Justice S.R. Romilly. In summary, the decision has determined that the rental disclosure issued on October 31, 2002 that set the period of time as indefinite, is valid. This has been a complicated matter for strata corporations to interpret, and the decision, unless it is overturned, will help strata councils understand their application of rental bylaws. As an owner, if you were the first purchaser, and the strata corporation is enforcing a rental bylaw against your strata lot, you might wish to make an appointment with your lawyer and have them review the decision along with your particular rental disclosure statement. To make this a bit more complicated, the rules change on rental disclosures of new developments created as of January 1, 2010 and after. A rental disclosure statement, if filed properly, will apply to the entire building for the time period set out in the rental disclosure, and "indefinite" will not be acceptable. If you are considering buying in a new building filed as of January 1 or later, and the rental disclosure sets out an expiry date of December 31, 2050 for example, that means a bylaw that prohibits or limits rentals in the new building, will not apply to those described strata lots until December 31, 2050. For more information on the new changes go to bclaws.ca or choa.bc.ca and click on Legislative Alerts & Updates, or contact 1-877-353-2462 ext 2 to receive a print copy of the new amendments.

**For more information on CHOA resources and benefits visit www.choa.bc.ca
or contact the office at 1-877-353-2462 or email office@choa.bc.ca.**

No part of this publication may be reproduced without the prior written permission of CHOA

This publication contains general information only and is not intended as legal advice. Use of this publication is at your own risk. CHOA will not be liable to you or any other person for any loss or damage arising from, connected with or relating to the use of this publication or any information contained herein by you or any other person.