

**Condo Smarts**

Headline: Buying a Rental Investment

Topic: Buying

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**Dear Condo Smarts:** I have been working with a realtor and trying to find a condo to purchase for investment that I intend to use as a rental. There seems to be quite a bit of confusion right now over the types of units that can be rented, whether some are grandfathered, and how many units are available to rent under a strata corporation's bylaws. I have requested information certificates for two buildings and upon reviewing the bylaws and the number of rentals, there seems to be no logic in the relationship of the limitation on rentals and actual number of rentals. One building's bylaws permit only ten rentals, yet there were 21 listed on the form. The property manager told us that included a number of family rentals and "developer permitted rentals." We have also been told that the changes in the strata laws have now exempted "developer rentals" from strata bylaws. Could you please tell us how we could find a building that we can buy a unit, rent it out, and have some long-term security over its use. We hopefully want to find a building where we can support the council and owners and perhaps some day retire there. Jens Crezma, Vancouver

**Dear Jens:** There have been some minor changes in the Strata Legislation that affect rental units. A strata corporation is permitted to adopt a bylaw that limits or restricts the number of rentals to either a specific number, such as 10 units, or a specific percentage, such as 10% of the total number of units. The changes in legislation now exclude family rentals, as permitted by the act, and hardship exemption rentals. So in the total count of the number of rentals permitted under a bylaw, those are no longer included. There is no such description as "developer rentals," but I suspect you are referring to the effects of a rental disclosure statement. There are two different exemptions now that apply to rental exemptions, and they refer to units filed under a rental disclosure before January 1, 2010, and those filed after January 1, 2010. For strata lots created with a valid filed rental disclosure before January 1, 2010, the owner developer was permitted to file the proper form with the Superintendent of Real Estate. The form set out a declaration of the units they intended to rent for a

prescribed period of time. That exemption, if enforceable, applies only to the first purchaser, and expires on the period of time published on the form or when the first purchaser sells the unit. Many of these forms filed before January 1, 2010, identified the period of time as "indefinite," and a court decision in 2000 found that an "indefinite period" was unenforceable, and the first purchaser was not exempt; however, a recent court decision in December of 2009, of Spagnuolo v. Strata Plan BCS 879, has overturned the previous decision, and has found that an "unlimited period" is a valid rental Disclosure Statement.

If you are purchasing a unit from a developer where the proper rental disclosure form was filed prior to January 1, 2010, and it identifies the intent to rent the units for an "unlimited" period, then as the first purchaser you are likely exempt from the rental bylaws. If you are buying from the first or a subsequent purchaser, that exemption no longer applies.

As of January 1, 2010, the rules have changed on new developments. If the developer now files a rental disclosure statement to set out the number of strata lots intended to be rented, they must now specify an actual date the disclosure expires. If they have executed that correctly, the strata lot itself is now exempt for that period and the first purchaser rule no longer applies. If the new rental disclosure states that the exemption period expires on January 1, 2050, then the strata lot is exempt from rental restriction bylaws to that date, regardless of who the owner is. The only way you can have some assurance that your strata lot will be exempt from strata bylaws, is by purchasing a unit that falls under a rental disclosure exemption. Even strata buildings that average a high ratio of rentals with no bylaw restrictions often change over the years and adopt rental bylaws. Before you purchase, make sure you have a copy of the rental disclosure from the Superintendent of Real Estate, and seek legal advice on the enforceability of the form. Not all forms grant exemptions or are enforceable, so never assume your unit will be exempt.

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