

Condo Smarts

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Dear Tony: I own two condos in a Burnaby highrise that I have been renting for the past 5 years. I purchased them from the developer and was told at the time I would be exempt from any rental bylaws. We have just received a letter from our management company advising that we are in violation of the bylaws because we are not using the approved rental agent to manage our rented units. I contacted the manager who insisted that because of the strata bylaws adopted this summer, we are now forced to use their services or face a fine of \$200 a week. I contacted the strata council who advised they were instructed by the management company, who wrote and provided this bylaw, that this was an industry standard. This is absolutely unacceptable. I have always managed my own tenants, with no complaints, and where does the strata corporation get the authority to impose a bylaw that basically tells owner how they manage their own properties and investments.

Keith P.

Dear Keith: You are absolutely correct. There are a number of conditions of this bylaw that do not comply with the *Strata property Act*. A strata corporation is permitted to adopt a bylaw that limits or restricts the number of rentals in a strata corporation. However, there are a number of limitations to those bylaw restrictions. Family rentals, which are the children or parents of the owner or the owner's spouse are exempt and not included in the rental count. Hardship exemptions qualifying to rent are exempt and not included in the rental count. Existing tenants at the time the bylaw is passed are exempt. Owner developer exemptions, which have exempted specific strata lots for a specified period of time are exempt from rental bylaws. In addition to the exemptions, strata corporations are specifically prohibited from screening tenants, establishing a screening criteria to require the approval of tenants, require the insertion of terms in tenancy agreements, or otherwise restrict the rental of a strata lot. Except for the exemptions, a strata corporation may limit the number of rentals either by percentage or a specific number, and the limit

the period of time for which residential strata lots may be rented.

A bylaw which requires that a strata owner must engage the agency services of the strata management company has a number of serious complications. As the agent, the management company is essentially acting as the strata corporation. As a result of the mandatory representation for rentals, the manager and strata corporation are imposing a screening or tenancy negotiation process whereby the strata corporation is involved. This may render the strata rental bylaw unenforceable and create a significant liability for the strata corporation in the event an owner/investor commences a court action. Under the *Real Estate Services Act*, the strata management/rental company which are one in the same in this specific case, has an obligation to determine who their primary client is. Their duty of representation will be first to that primary client, and as a result of the bylaw, without your ability to seek a primary client management relationship, you are placed in a secondary position, which can be a disadvantage. This also places the same agent of the owner in a complicated position with respects to the reporting and enforcement of all bylaws and rules, as their duty is to the strata corporation, leaving you the owner and your tenants without representation. Your strata council may wish to contact the Real Estate Council and speak to a compliance officer to discuss this dilemma. One more complication, that may also involve the BC Law Society, is that the writing of bylaws for a fee under the *Legal Professions Act* is the duty of a licensed lawyer. Bylaws have significant impact over right of use, access, property risks and values, and should always be reviewed by legal counsel before they are adopted.

Ultimately, a strata corporation does not have the authority to impose individual contracts for personal service or representation of an owner. This would extend to personal risks and liabilities as well, such as homeowner or tenant insurance policies, and private communication providers.

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