

Strata Property Act - New Rental Restrictions

Since its adoption, the *Strata Property Act* has permitted strata corporations to adopt rental restriction bylaws that restrict the ability to rent out residential strata lots. With the adoption of the *Strata Property Amendment Act*, important changes to rental restrictions for new strata developments come into force as of January 1, 2010.

Rental Disclosure Statements

Developers of residential strata lots have long been required to file a rental disclosure statement with the Superintendent of Real Estate, in which they disclose if they intend to rent any of the residential strata lots they are developing in their project.¹ Typically when completing the rental disclosure statement, developers would reserve the right to rent out the strata lot and avoid rental restrictions subsequently adopted by the strata corporation. The second was to address the concerns of the developer's lenders who wanted to ensure that if the project encountered problems, and the lender either took title to the strata lots or sold them through the foreclosure process, the strata lots could be rented out.

Rental Restrictions and the First Purchaser

Rental restrictions are allowed by the *Strata Property Act*.² As a general rule, strata corporations may restrict or prohibit rentals of residential strata lots by the adoption of a bylaw by a 3/4 vote that either (a) prohibits the rental of strata lots, or (b) limits the number or percentage of residential lots that may be rented or the period of time that the residential lots may be rented.

Historically, if the owner is the first purchaser (purchased the strata lot from the developer) and a valid rental disclosure statement was filed with the Superintendent of Real Estate, that filing preserves that first purchaser's right to rent the unit until the expiry of the rental period specified in the rental disclosure statement, notwithstanding the adoption of rental restrictions by the strata corporation following the initial purchase.

Strata Property Amendment Act

With the adoption of the *Strata Property Amendment Act*, new rules apply to residential strata developments where the rental disclosure statement is filed with the Superintendent of Real Estate on or after January 1, 2010. If a strata corporation adopts a rental restriction bylaw, the bylaw will not apply to any strata lot where the developer filed a rental disclosure statement until the rental period specified in the rental disclosure

statement expires. The number of subsequent owners of the strata lot is irrelevant, with all subsequent owners being able to rent out their strata lots until the rental period expires.

In other words:

(a) for residential strata lots where the rental disclosure statement was filed *before* January 1, 2010, any rental restrictions adopted by the strata corporation will apply to a strata lot on the earlier of:

- (i) the date the strata lot is conveyed by the first purchaser to a new owner; and
- (ii) the date the rental period set out in the rental disclosure statement expires; and

(b) for residential strata lots where the rental disclosure statement was filed *after* December 31, 2009, the number of owners subsequent to the first purchaser is irrelevant and the ability of all subsequent owners to rent continues until the date the rental period set out in the statement expires.

This means that developers can now create strata complexes that effectively have no ability to prohibit or limit rentals.

With the amendments to the Strata Property Act, a market may develop for new complexes that limit or prohibit rentals, much like there is a market for age-restricted complexes. Accordingly, developers may start considering the adoption of rental restriction bylaws for new projects.

Buying from Developers

When buying from a developer, purchasers and their advisors should always review the disclosure statement filed under the *Real Estate Development Marketing Act* and review its comments about rental restrictions, the proposed bylaws and the rental disclosure statement. Now, they should also focus on the date the rental disclosure statement was filed with the Superintendent of Real Estate. If the rental disclosure statement was filed with the Superintendent of Real Estate before January 1, 2010 the old rules apply. If it was filed after January 1, 2010, the new rules apply. To make it a little easier to visually distinguish between a pre-January 1, 2010 rental disclosure statement and a new one, the form of the statement has been slightly modified.

Buying in Resale Market

When buying in the resale market, purchasers and their advisors should always review the bylaws and any rental restriction contained in the bylaws, as well as the rental disclosure statement. If not available from the seller, a copy of the rental disclosure statement can be obtained from the Superintendent of Real Estate, upon payment of a \$38 fee.

¹ *Strata Property Act*, S.B.C. 1998, c. 43, s. 139

² *Strata Property Act*, S.B.C. 1998, c. 43, s. 141

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