



# Real Estate Primer

WITH LAURA HOLLAND

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## Can I Rent My Strata Lot? Rental Restrictions & Strata Property

by Thomas Clifford, Articled Student

Over the past few days I have searched the depths of the library and the internet to figure out how to determine what rental restrictions apply to strata property. Each strata property seems to have a number of different rules with a number of different exemptions. Determining what rules and what exemptions apply to a specific unit can be a daunting task. Below is an outline of the information I have found which I hope will assist in answering the age old question, CAN I RENT MY STRATA LOT?

### STEP 1 – EXAMINE THE BYLAWS

The first place to look when determining if there are rental restrictions on a strata property is to examine the applicable bylaws. The bylaws may be the Standard Bylaws contained in the Schedule of Standard Bylaws at the end of the *Strata Property Act*, or may be modified or changed completely. A copy of the bylaws for a particular building or complex may be obtained through the strata management company or the Land Title and Survey Authority (“LTSA”). The Standard Bylaws are silent on rental restrictions; therefore, if a Strata property has not modified the Standard Bylaws, the first assumption is that there are no restrictions on rentals.

However, it is rare for a strata corporation to adopt the Standard Bylaws without modifying them to some degree. Most individuals who intend to reside in a strata building prefer a fewer number of rental units. On the other hand, investors prefer rental units be allowed. This creates a fine balance that the strata corporation must consider when developing their bylaws.

### New rental restriction bylaws

If you currently own a unit in a strata building with no rental restrictions, and a bylaw is passed that limits the number of rentals, there is a grace period provided under the *Strata Property Act*. ▶



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This grace period allows current owners a period of time where they are not required to comply. The new bylaw will not apply until **the later of**: one year after a tenant who is occupying the unit moves out, or one year after the bylaw is passed.

## STEP 2 – DETERMINE IF AN EXEMPTION APPLIES

If you review the applicable bylaws and there is a rental restriction, or one has been recently imposed, your unit may be exempt from complying. Currently, there are three exemptions to the rental restriction bylaws:

1. **Family Rentals** — a bylaw to restrict rentals does not apply to prevent the rental of a strata lot to a member of the owner's family (spouse, parent, child, or parent or child of the spouse);
2. **Hardship Exemption Rentals** — an owner may make an application to the strata corporation for an exemption on the grounds that the bylaw causes hardship to the owner; and
3. **Owner Developer Exemptions** — created by the developer filing a Rental Disclosure Statement ("RDS") prior to the first residential strata lot being offered for sale.

The first two exemptions are fairly self explanatory. It is the third exemption that creates much confusion and therefore is the focus of my discussion.

When determining if your unit falls within the Owner Developer Exemption, you must find out whether the developer of your strata filed an RDS. An RDS is a document that informs potential investors that the developer intends to hold a number of units and rent them. The statement sets out a description of the units to be rented and the date that the rental period expires. The developer may then decide to sell the units or rent them for a period and then sell them. Regardless of whether the developer sells the units or keeps them, the RDS continues to govern the rental restrictions for the period set out. In other words, these units can be rented according to the RDS.

If an RDS exists for your strata, you can obtain a copy from the Financial Institutions Commission ("FICOM"). Once obtained, you can confirm whether your unit is listed as a rental unit. If your unit is listed as one of the rental units, there are two sets of rules that apply as follows:

1. Rental Disclosure Statements filed before January 1, 2010; and
2. Rental Disclosure Statements filed after December 31, 2009.

For an RDS filed before January 1, 2010, the units described as rental units are exempt from rental restriction bylaws until **the earlier of**:

- a. the date the unit is sold by the owner who originally purchased from the developer; or
- b. the date the rental period expires as stated on the RDS.

For an RDS filed after December 31, 2009, the units described as rental units are exempt from the rental restriction bylaws until the date that the rental period expires as stated on the RDS. This means that even if the unit is sold to a number of different owners, the rental restriction bylaws do not apply until the rental period expires. This distinguishes the statements filed after December 31, 2009, from the ones filed on or before that date.

The rental period as described on the RDS may be for a few years or may be for an indefinite period. A 2009 case from the British Columbia Supreme Court held that an RDS was valid even though it did not have an expiry date.

If your unit is listed on an RDS, and the rental period has not expired, then the RDS governs the rental restriction for your particular unit. ▶



### **Example**

For example, if you live in a strata building that imposes a 30 unit maximum rental restriction bylaw and there are 20 units that were originally included in the RDS, then there will be a total of 50 units eligible for rent. The bylaw will not affect the units under the RDS until the rental period expires (or the original owner sells the unit for an RDS filed before January 1, 2010). Once the RDS is no longer valid, the unit will fall into the general pool of units and be governed by the 30 unit restriction.

### **FINAL THOUGHTS**

It is clear why there is much confusion surrounding rental restrictions in strata properties. For any one strata property there are multiple rules that govern rental restrictions. To determine if your unit is governed by a rental restriction, it is pertinent to establish which set of rules apply. If you follow the steps above, it should give you a good indication as to the restrictions for your particular strata. If you continue to be unsure, call one of the knowledgeable staff at Drysdale Bacon McStravick LLP and we will be happy to assist you.

### **Disclaimer**

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