

Condo Smarts October 13, 2021

Does a Rental Disclosure Apply to Short term Rentals?

Dear Tony: We bought our townhouse in 2014. At the time it was a new development in Burnaby and the owner developer filed a rental disclosure document that exempted all strata lots, 1-68, from rental bylaws until June 1, 2064. Basically, our building is exempt for 50 years. We decided to rent our unit out on Air BnB and were informed by the strata council that there was a bylaw that prohibited short term rentals and we would be subject to a fine of \$1,000 per day if we proceeded. They gave us a 30-day warning to honour our bookings and allow us to comply. We requested a copy of the bylaw and then discovered older bylaws that make the whole issue confusing. Because the bylaw refers to rentals do we not have the same exemption under the owner developer exemption? Sarah P.

Dear Sarah: The owner developer exemptions apply in two different time periods. Prior to 2010, any strata plan that was filed with an owner disclosure exemption, would apply only to the first purchaser. Once the first purchaser sells or conveys the lot through an estate or transfer ends the exemption. After January 1, 2010, the exemption applies to the strata lots identified on the form and for the time period prescribed as in your strata corporation. Sale or conveyance has no impact on this exemption. A short-term accommodation, or as is referred by local governments in permits and licensing “short term rental” bylaws, is not exempted in the disclosure. Short-term accommodations are not rental agreements or leases of 30 days or longer. They are not subject to the Residential Tenancy Act. They are business use arrangements, such as a hotel use and subject to enforcement. The maximum fine permitted in the regulations is \$1,000 per day; however, the corporation must adopt the maximum fine within their bylaws for this to be enforceable. Fine limits and frequency require a bylaw amendment and 3/4 vote at an annual or special general meeting for approval and must be filed in the Land Title Registry to be enforceable. The strata corporation must provide a copy of the bylaws of the corporation if requested. I did review the bylaw registrations for your strata corporation and no bylaw amendment has ever been filed to increase the penalty to \$1,000 per day. The current penalty for breach of bylaws is a maximum of \$200 per week. This is a frequent error by strata councils. While maximum fines are permitted, they must be adopted as bylaw amendments and filed to be enforceable. Filing new bylaws that have been properly ratified at general meetings is only part of bylaw amendments. The strata corporation must also include the resolutions they voted on to approve the bylaws. These resolutions indicate whether it is current bylaws that are being amended, or if bylaws are being repealed and replaced. The resolutions may have a greater impact and result on the bylaws enforceability than the bylaws themselves. Don't rely on the most recent version of bylaw amendments filed. There could potentially be years of filings that have only be amended or modified without ever an amendment that detailed the sequence of bylaw applications. A thorough legal review of the bylaw schedules filed is critical to ensure your strata corporation bylaws do not contradict intent and are enforceable.

Tony Gioventu, Executive Director CHOA

Always include your strata plan number if you are requesting assistance.

Kindly note CHOA is a member-based, non-profit association. If your strata is not currently a CHOA member please consider joining – membership details are posted on our website at: <https://www.choa.bc.ca/about-choa/join-choa/>

Join us this Fall in the ‘Condo Classroom’: Both weekday and weekend registration options for the convenience of attendees! For more information visit our website at:
<https://www.choa.bc.ca/seminars/>

COVID-19: To prevent the spread of COVID-19 CHOA staff may be working remotely. During this time we are online and available by phone and email to assist with your strata questions. Please stay safe and healthy.