

MULLIN DEMEO

BARRISTERS & SOLICITORS

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MULLIN DEMEO ELECTRONIC LEGAL UPDATE, January 26, 2010

Effective December 10th, 2009, the Provincial Government enacted a host of changes to the British Columbia *Strata Property Act* (the "Act"). This update focuses primarily on changes to the provisions governing rental restriction bylaws and the effect of rental disclosure statements (the "Rental Disclosure Statement") filed alongside new strata developments. The following discussion outlines the rules governing the application of rental restriction bylaws and identifies the recent changes to the Act and their effects.

1. If the Strata Lot is Subject to a Tenancy

Per section 143 of the Act, if a particular strata lot is occupied by a tenant at the time of the enactment of a rental restriction bylaw, the bylaw does not operate against the particular strata lot until the later of either one year after the tenant occupying the strata lot at the time the bylaw is passed ceases to occupy it as a tenant, or one year after the bylaw itself is passed by the strata corporation. This particular provision of section 143 of the Act remains unchanged, and newly enacted rental restriction bylaws going forward remain subject to existing tenancies.

2. If the Strata Lot is designated as a Rental Strata Lot on a Rental Disclosure Statement

Until the enactment of the recent changes to the Act if a strata lot was designated as a rental strata lot on the Rental Disclosure Statement, the effect of the enactment of a bylaw either prohibiting or limiting rentals would not apply to that particular strata lot until the earlier of the date the strata lot is conveyed by the first owner or the date on which the rental period expires, as disclosed in the Rental Disclosure Statement.

The recent changes to the Act create two scenarios. Where the owner-developer filed a Rental Disclosure Statement prior to January 1, 2010, the above-noted rules continue to govern. However where the owner-developer filed or files the Rental Disclosure Statement on or after January 1st, 2010, a rental prohibition/restriction bylaw will not be effective against a strata lot designated as a rental strata lot on the Rental Disclosure Statement until the expiry of the rental period in the Rental Disclosure Statement. The benefits of immunity from rental prohibition/restriction bylaws flow not only to the initial buyer of the strata lot but to any and all subsequent buyers thereof, until such time as the stated rental period expires.

3. Exemptions Continue

The exemptions from the application of rental restriction bylaws remain unchanged. Among other exemptions, a strata lot owner who would suffer hardship from the application of a rental prohibition/restriction to their strata lot may apply to the strata corporation for an exemption, while a bylaw limiting or prohibiting rentals does not prevent the rental of a strata lot to a member of an owners family, both "owners" and "family" being defined in the regulations to the Act

This discussion is intended only as a brief introduction to the subject matter. Should you have any questions or concerns with respect to this or any other aspect of real estate law, please contact Mullin DeMeo at lawyers@mdlawcorp.com, or (250) 477-3327.

Thank you for your time,