

Strata Lot Rental Disclosure Statement Changes

Determining whether a buyer will be able to rent a strata lot is sometimes confusing. The most significant document in determining whether a buyer can rent a strata lot is the Rental Disclosure Statement. A Rental Disclosure Statement is filed by a developer before any strata lots are offered for sale and indicates which strata lots are designated as rental strata lots and the rental period. In a majority of cases, the developer will identify all strata lots in the development as rental strata lots on the Rental Disclosure Statement.



Until recently, the general rule has been, if the buyer bought a strata lot from the developer and the developer had filed a Rental Disclosure Statement that identified that strata lot as being intended for rent, and the Rental Disclosure Statement had not expired, the buyer was entitled to rent that strata lot notwithstanding a rental bylaw. The rental bylaw would not apply to that strata lot until the Rental Disclosure Statement expired or the strata lot was sold, whichever happened first.

Recent amendments to the *Strata Property Act* have changed the general rule. For all developments for which the Rental

Disclosure Statement was filed on or after January 1, 2010, a rental bylaw passed by a strata corporation does not apply to a strata lot identified in the Rental Disclosure Statement until the expiry of the Rental Disclosure Statement.

The ability to rent a strata lot can be of great importance to a buyer so licensees need to understand the change and alert buyers to it.

Whether they act for a seller, a buyer, or both, licensees are accountable for any information they provide regarding the real estate or a trade in real estate. There-

fore, if a licensee is uncertain about the answer to any question a seller or buyer may have regarding the rental of a strata lot, they should advise that person to obtain independent legal advice.

Steps Licensees Representing Buyers Should Take

Resale—Older Buildings

Because a Rental Disclosure Statement is generally filed in the pre-marketing period, any building that was built by January 1, 2010 would most likely have a Rental Disclosure Statement that was

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filed prior to January 1, 2010. For those buildings, only the first buyer would have the benefit of the Rental Disclosure Statement until the Rental Disclosure Statement expired.

If the building is clearly a building where the Rental Disclosure Statement was filed before January 1, 2010 (i.e. built in the 80s, 90s or early 2000s), the general rule will apply. Buyers of resale strata lots should be advised that they have no protection from a rental bylaw and that a rental bylaw (either existing or one passed in the future) will apply to them.

New Developments

If a strata lot is being sold on behalf of a developer, the licensee should determine whether the Rental Disclosure Statement was filed before or after January 1, 2010.

Before January 1, 2010

A Rental Disclosure Statement filed before January 1, 2010 will protect the developer and first buyers from the application of any rental bylaw passed by the strata corporation until the Rental Disclosure Statement expires. A buyer who purchases from a first or subsequent buyer does not have the benefit of a Rental Disclosure Statement.

Therefore, although buyers who purchase from the developer will be protected from a rental bylaw if the Rental Disclosure Statement has not expired, future buyers will be subject to any rental bylaw that a strata corporation passes. The future buyers are not protected even though the Rental Disclosure Statement has not expired.

Buyers from Developers who wish to take advantage of their right to rent should confirm that the rental period in the Rental Disclosure Statement is far enough into the future so that the first buyer's right to rent will not be terminated by the expiry of the Rental Disclosure Statement. In most cases, the rental period for Rental Disclosure Statements filed before January 1, 2010 is at least 99 years, or is for an indefinite or unlimited period.

After January 1, 2010

A Rental Disclosure Statement filed on or after January 1, 2010 will protect the developer and all buyers from the appli-

cation of a rental bylaw until the expiry of the Rental Disclosure Statement.

The amendment to the *Strata Property Act* has extended the benefit of the Rental Disclosure Statement from just the first buyer to all buyers until the expiry of the Rental Disclosure Statement. In other words, second, third, fourth, etc. buyers will be able to rent their strata lot as long as the Rental Disclosure Statement has not expired providing that the Rental Disclosure Statement was filed with the Superintendent of Real Estate on or after January 1, 2010.

Essentially, the strata corporation is not able to restrict rentals during the term of the Rental Disclosure Statement. If the buyer sells the strata lot while the Rental Disclosure Statement is in effect, the subsequent buyer would also be permitted to rent the strata lot. This effectively broadens the potential market for the strata lot and may be viewed by the buyer as an advantage. However, for a buyer hoping to see rental restrictions in place in order to create an owner occupied community, the fact that the strata corporation would be unable to restrict rentals may be viewed by a buyer in such a circumstance as a disadvantage.

All buyers, including buyers from developers, should confirm the rental period on the Rental Disclosure Statement. Although, in the past, most Rental Disclosure Statements did not expire for significant periods of time since January 1, 2010, some developers have filed Rental Disclosure Statements for a very short period, such as five years. In such cases, the protection from a Rental Disclosure Statement ends for all owners, including the first buyer, when the Rental Disclosure Statement expires. Most first buyers believe that they will always be able to rent because they purchased from the developer. This is not the case. Developments with very short rental periods would, therefore, not be attractive to buyers who wish to rent the strata lot for an extended period.

Future Resales

In the past, because the Rental Disclosure Statement did not apply to anyone other than the developer and first buyer, very

few strata corporations bothered to attach the Rental Disclosure Statement to the Information Certificate (Form B) when a strata lot was re-sold. However, because the Rental Disclosure Statements filed on or after January 1, 2010 can benefit second, third, and fourth etc. purchasers it is necessary for the Rental Disclosure Statement to be attached to the Form B so that buyers and licensees acting on their behalf can determine whether the resale has a pre-January 2010 Rental Disclosure Statement, in which case the new buyer would not benefit from the Rental Disclosure Statement, or whether the resale has a post-January 2010 Rental Disclosure Statement, in which case the new buyer will have the benefit of the Rental Disclosure Statement until it expires.

It will, therefore, be necessary for buyers and licensees acting on their behalf to determine the expiry date of the Rental Disclosure Statement for the resale of strata lots in the future. Section 59 of the *Strata Property Act* requires that the developer's Rental Disclosure Statement be attached to the Information Certificate (Form B). As noted above, unless the building is clearly one for which the Rental Disclosure Statement was filed before January 1, 2010, licensees acting on behalf of buyers should insist that the Rental Disclosure Statement be attached to the Form B. If the licensee has any doubt or uncertainty about the date the Rental Disclosure Statement was filed, the licensee should insist that the Rental Disclosure Statement be attached to the Form B.

Licensees acting on behalf of buyers should then check the filing date on the Rental Disclosure Statement.

1. If the Rental Disclosure Statement was filed before January 1, 2010, buyers of resale properties should be informed that a rental bylaw would apply to them.
2. If the Rental Disclosure Statement was filed on or after January 1, 2010, the licensee should check the expiry date and, if the date has not expired, advise resale buyers that they will be protected from a rental bylaw until the Rental Disclosure Statement expires. ■