



Fischer & Company

Law Corporation

#202 – 1447 ELLIS STREET KELOWNA, B.C. V1Y 2A3
TELEPHONE: 250-712-0066 FAX: 250-712-0061

www.fischerandcompany.ca

BC STRATA AND CONDOMINIUM LAW NEWSLETTER

May 2016

Strata Basics and Tips

Document Handling Issues

Taeya C. Fitzpatrick and Matthew D. Fischer

Imperfect document handling by strata corporations is frequently a cause of problems, or can complicate the cost of resolving other legal issues, needlessly increasing the expense.

We frequently see basic problems like owners relying on forms which were prepared in haste; mistakes in registering bylaws; relying on unfiled versions of documents; as well as more advanced and complicated problems arising from incomplete handover of documents at the end of a management contract, failure to include electronic records in the Strata Corporation's official files; or failure to correctly balance privacy and privilege vs transparency and disclosure. There are serious pitfalls for the unwary.

We will be presenting on these topics and facilitating a workshop on June 14th for the Professional Association of Managing Agents. PAMA members are encouraged to make the time to attend this important seminar and workshop. For more information on the upcoming event, [click here](#).

Air BnB's, Rentals and Strata Corporations

Matthew D. Fischer and Taeya C. Fitzpatrick

The question of whether a Strata Corporation can restrict Air BnB rentals, short term rentals, roommates, boarders and/or vacations rentals is not a simple question to answer. There are many things to consider with this type of question.

Section 141 of the Strata Property Act permits a Strata Corporation to enact bylaws which govern the use of a strata lot, and can include restricting an owner's ability to rent their strata lot. However, the ability to restrict rentals is limited to restricting the number of rental units, the duration of rentals, or prohibiting rentals altogether. Even a valid rental restriction bylaw is subject to certain exemptions such as hardship, renting to family members, or units protected by a form filed by the Owner Developer.

The popularity of websites and phone apps which allow for easy arrangement of short-stay strata lot rental or casual bed and breakfast style accommodation has demonstrated the inadequacy of B.C.'s laws for regulation of these current trends.

Some lawyers have come to the opinion that there is a potential distinction between a rental of a strata lot, and a license of a strata lot. As a simplified example, a hotel-like occupancy of a strata lot where the term is short (24 hours to a week), occupancy can be cancelled by either party at will, and the occupant cannot assign the right of occupancy to anyone; might be characterized as a license. This is contrasted with a longer term rental (or a lease) where the renter has exclusive possession of the unit, the rental cannot be terminated without notice, and the renter can potentially assign their right to occupy the unit to another person.

Section 121 of the Strata Property Act states that, other than a valid rental restriction bylaw, a bylaw is not enforceable where it prohibits or restricts the right of a strata lot owner to freely sell, lease or otherwise dispose of the strata lot or an interest in the strata lot, except for valid rental restrictions under section 141. However, existing case law establishes that a license is not a disposition of an interest in land.

In the case of **The Owners Strata Plan VR2213 v. Duncan & Owen, 2010 BCPC 123**, the Provincial Court determined that the hotel-like use of a strata lot was not a rental of the strata lot, and as such, that a Form K was not required. The Court distinguished between the rental of a strata lot and the license of a strata lot, determining that the hotel use of the strata lot was a license and not a rental. The case is problematic in that there is a question as to whether the Provincial Court had the jurisdiction to make that determination; however, the decision is very well reasoned and that argument is likely to be used again.

What does this mean for Strata Corporations? The answer remains uncertain until the

legislation is updated or the Courts provide better direction on the issue. Until the matter is further clarified, lawyers may continue to disagree as to what is permitted. Potentially, there are new arguments which could be made to justify positions like:

- A strata corporation may be able to restrict licenses (as distinguished from rentals) with a well crafted bylaw, without regard for limitations on rental restriction bylaws or the Strata Property Act's statutory exemptions from valid rental bylaws;
- A strata corporation may be able to rely upon existing bylaws prohibiting business use of a strata lot to prevent short term rentals;
- An Owner may be able to use their strata lot as a Vacation, short stay or Bed and Breakfast style accommodation, even if there is a bylaw prohibiting "Rentals"; and
- The issue of house-sitting, roommates renting part of a strata lot and similar grey areas might be reopened.

Municipal Zoning restrictions and business permit bylaws also factor heavily into this issue and must be taken into account. In some cases, existing restrictions may prohibit certain types of licenses of occupation.

If your Strata Corporation has a problem with short stay rentals, or is considering enacting bylaws to handle this issue, the Strata Council should seek legal advice before taking any steps. Bylaws relating to rentals and licenses are complex to draft, can easily create serious problems and/or liability if they are not properly drafted and are frequently challenged. We routinely draft rental restriction bylaws and other bylaws that legally restrict an owner's use of their strata lot and would be happy to assist with preparing appropriate bylaws.

Know Your Insurance Policy

Taeya C. Fitzpatrick and Matthew D. Fischer

Strata lot owners need to make certain that they have adequate insurance over their strata lot. It is a common misconception that individual owners don't need coverage because the strata corporation has mandatory insurance. However, the strata corporation only insures the common property, common assets and original fixtures of a strata lot (**section 149 of the Strata Property Act**). Owners, in obtaining insurance for their strata lot, should ensure that they are adequately covered for their improvements, liability coverage and optional coverage for the strata corporation's insurance deductible - to protect the owner from being responsible to pay a strata corporation insurance deductible in the event that the damage giving rise to the insurance claim originated from the owner's strata lot.

It is important for an owner to be aware of the coverage and terms of their insurance policy because the insurance policy may not cover the owner in all circumstances. For example

one common policy provides that a deductible will only be paid "where the "Condominium Corporation's" governing rules specifically permit it to place the responsibility for any portion of the Master Insurance Policy Deductible on an individual unit owner."

The reference to a "Condominium Corporation's governing rules" is ambiguous and potentially problematic. A strata corporation is governed by the Strata Property Act, its bylaws and rules. The designation of responsibility for an insurance deductible is not something that is normally or correctly covered in a strata corporation's "Rules", if that is what is intended. It is also notable that neither section **158(2) of the Strata Property Act**, nor the case law requires a strata corporation to have a rule that permits it to charge back the insurance deductible to a responsible owner in order to claim that deductible. That exclusion leaves owners with a potentially serious coverage gap.

A owner needs to be aware that a strata corporation may charge back the insurance deductible to an owner and the owner has to ensure that their own insurance policy covers the cost of the insurance deductible as strata corporation insurance deductibles typically range from \$1,000 to \$100,000 or more depending on the insurance policy and the strata corporation's asset value, loss history and perceived risk exposure.

If you have concerns about your insurance policy wording or are having issues with your insurer regarding your coverage, you should seek legal advice promptly.

Legal Pitfalls

Reasonable Repairs

Taeya C. Fitzpatrick

In the case of **Hirji v The Owners Strata Corporation Plan VR 44, 2015, BCSC 2043**, the owner claimed that significant damages were caused by the strata corporation's failure to adequately repair, in a timely fashion, the water ingress into the owner's unit. The strata corporation did several repairs to the owner's unit and completed the repairs in a progressive fashion spending nearly \$100,000 in repairs to the unit. The owner did not agree with the strata corporation's repair strategy and sued the strata corporation.

The Court found that in the circumstances the strata corporation's incremental and progressive approach to repairs was a reasonable approach. Further, the Court found that the strata corporation had been fiscally prudent and cautious in the manner of the repairs to the strata corporation, which was mandatory in order to fulfill its duty: the strata corporation had to consider the overall cost and not just the nature and extent of an individual owner's problems.

Fischer & Company

Fischer & Company, located in the heart of the Okanagan, Kelowna, has provided a wide range of legal services to individuals, strata corporations and management companies in Kelowna, the Okanagan, and throughout the entire Province of British Columbia, since 2007. Fischer and Company is comprised of two lawyers, Matthew Fischer and Taeya Fitzpatrick, and a dedicated support team.

For more information on our Services Offered, to review our online Strata Basic Tips or New updates, or to see how we can assist you with your issue, please visit our website at www.fischerandcompany.ca

This publication contains general information only and is not intended as legal advice. Use of this publication is at your own risk. FISCHER AND COMPANY, the author and related entities will not be liable to you or any other person for any loss or damage arising from, connected with or relating to the use of this publication or any information contained herein by you or any other person. This publication may include links to other websites (external links to third parties) that are independently owned and operated by other organizations – FISCHER AND COMPANY does not assume responsibility for these third-party websites and is not responsible for any external website or content.

Copyright © 2016 Fischer and Company Law Corporation, All rights reserved.

You are receiving this email because you opted in at our website or through our newsletter signup sheet.

Our mailing address is:

Fischer and Company Law Corporation
202-1447 Ellis Street
Kelowna, Bc V1Y2A3
Canada

Add us to your address book

Want to change how you receive these emails?

You can **update your preferences** or **unsubscribe from this list**

The MailChimp logo is displayed within a grey rectangular box. The logo itself is in a white, cursive script font.