



Fischer & Company

Law Corporation

#202 – 1447 ELLIS STREET KELOWNA, B.C. V1Y 2A3
TELEPHONE: 250-712-0068 FAX: 250-712-0061

www.fischerandcompany.ca

BC STRATA AND CONDOMINIUM LAW NEWSLETTER

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URGENT ADVISORY! - CONTROVERSIAL STRATA PROPERTY ACT AMENDMENTS INTRODUCED

BILL 44 was introduced today to amend the Strata Property Act in four key areas:

1. To cancel and prohibit any and all rental restriction bylaws, including duration of rentals, number of rentals or rental prohibitions (BUT NOT including short term vacation stays or licenses such as Airbnb or VRBO - which can still be prohibited by bylaw)
2. To cancel and prohibit age restriction bylaws, except for age restriction bylaws reserving occupancy for residents 55 years of age and older.
3. To finally allow strata councils to effectively use the Residential Tenancy Branch to evict problematic tenants - subject to the delays and other issues inherent to the RTB process.
4. Adding permanent authorization for remote attendance electronic general meetings and hybrid in-person/electronic meetings, and a requirement that there be a method to confirm attendee eligibility.

These amendments have not yet been voted on or approved by the provincial legislature - but they are at first reading and are currently expected to receive enough affirmative votes to become law.

What If Strata Corporations Can No Longer Restrict Rentals?

If approved and enacted, Bill 44 is expected to come into force in 2023. Once in force, the proposed amendments to the *Strata Property Act* will cancel and prohibit any bylaws which seek to restrict conventional tenancies; including bylaws which establish a minimum duration of rentals, restrictions on the numbers or percentages of strata lots which may be rented, or prohibition of conventional rental arrangements altogether.

To be clear, once approved and in force, these amendments are intended to retroactively override any existing bylaws which restrict conventional tenancies, prevent any new bylaw intended to restrict conventional tenancies and make it mandatory to allow conventional tenancies without restriction. That is because section 121 of the *Strata Property Act*, provides that any bylaw which contravenes the wording of the Act is unenforceable. To make the intention clear and unambiguous, Bill 44 also includes an express provision in the new proposed wording for section 141 of the Strata Property Act, as follows (emphasis added):

141 **The strata corporation must not** screen tenants, establish screening criteria, require the approval of tenants, require the insertion of terms in tenancy agreements or **otherwise restrict the rental of a strata lot.**

It is important to understand that short term vacation accommodation in the form of a licence, or arranged through a service such as Airbnb or VRBO are not technically "rentals" and **can still be prohibited** by a properly worded, properly approved and properly registered strata bylaw or by municipal bylaw.

Every strata council should review their bylaws to begin planning for any required bylaw amendments, and consider whether bylaws related to conduct of occupants, short term vacation accommodation, composition of council, and related provisions are lawful and sufficient for council's needs in dealing with any expected changes.

Strata Councils for buildings with pending bylaw amendments may wish to wait until it is clear whether the proposed legislation passes and will come into force before finalizing any new rental or age restriction bylaws or amending existing bylaws to conform to these changes.

We never recommend that any strata corporation keep or enact unenforceable bylaws as doing so is not legally justifiable and can confuse owners and tenants and cause unnecessary disputes, controversy and liability.

Although I am not a politician or a lobbyist, I do think it is worth discussing the impact of these changes. It is my view that there are a variety of reasons why this legislative change will be controversial and has the potential to be problematic for strata corporations. Some smaller strata corporations rely on rental restrictions to keep a viable number of resident owners who are on-site and willing to serve on council. Other strata corporations rely on rental restrictions to keep rentals to reasonable limits considering the disruption caused by seasonal rentals. I am also skeptical about whether the changes can achieve the stated legislative objective of making appreciable improvements to the availability of rental

housing. My personal view is that rental housing solutions require laws which keep vacation rentals to large resort-style strata communities and make construction of more durable and inexpensive housing economically viable to construct and maintain. I suppose the counterpoint is that we have a rental housing crisis in British Columbia, and solutions need to be attempted.

CHOA, the Condominium Home Owners' Association has presented a letter to all members of the provincial legislature cautioning against approving these changes. In my view that letter does an excellent job of explaining some serious concerns with this legislative change. That document is worth reading for additional context, or for inspiration if interested individuals wish to reach out to their own MLA to express their views:

<https://choa.bc.ca/wp-content/uploads/MLA-letter-Nov-21-2022-FINAL.pdf>

Regardless, we remain optimistic that with an active and engaged strata council and properly drafted bylaws, nothing about this is expected to result in catastrophe.

What if Strata Corporations Can No Longer Restrict the Age of Occupants?

Age restriction bylaws typically fall into a 19+ or 55+ occupancy requirement, and have been validly in place for many strata corporations for many decades. Other age restriction bylaws are in circulation asserting a different minimum age. If approved and enacted, Bill 44 will amend the *Strata Property Act* to cancel and prohibit any bylaws which seek to restrict any age restriction bylaw other than a 55+ restriction on the age of occupants.

To be clear, once approved and in force, these amendments are intended to retroactively override any existing bylaws which restrict the age of occupants and prevent any new bylaw intended to restrict the age of occupants unless the existing bylaw specifically notes that the age of occupants is restricted to 55 years of age or older.

Any strata councils for an age restricted buildings should consider whether their current bylaw will remain enforceable if Bill 44 is enacted and comes into force. It is particularly important to consider whether a bylaw which specifies an age restriction other than 55+ should be amended if Bill 44 is enacted, and before the associated amendments to the *Strata Property Act* come into force.

Land Owner Transparency Act

The Land Transparency Act sets a deadline for "relevant corporations" and others to file a report for land owned in British Columbia. Some strata corporations and non-strata condominium developments have received notices indicating that a report may need to be filed before November 30, 2022, and warning of hefty penalties for non-compliance. The Legislation is intended to facilitate the tracking of money laundering and proceeds of crime, and to track beneficial ownership by foreign interests.

Strata Corporations are ordinarily exempted from the reporting requirements, however

non-strata condominium corporations may or may not be exempt depending upon technical factors.

Celebratory Note

2022 marks Matthew Fischer's 20th year of call to the Bar in British Columbia, and 18 years of focus on strata law. Of the many milestones in a career, the 20 year anniversary of admission to the Law Society of British Columbia seems significant enough to attract particular note. It is with appreciation that we acknowledge the community of strata managers, council members, owners and service providers who have made it possible for Fischer and Company to thrive; as well as the other members of the strata law bar who have made this practice of law interesting and intellectually rewarding. Thank you.

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. 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

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