

Mission Statement

The Real Estate Board of Greater Vancouver is an Association of realtors committed to providing its members with the structure and services to ensure a high standard of business practices and ethics and to effectively serve the real estate needs of the community.

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Will your buyer be able to rent the strata lot?

Buyers of condominiums may wish to know whether they have a right to rent their strata lot or whether they may be subject to a rental bylaw. Buyers who purchase strata lots as an investment will definitely need to know this information before they purchase.

It is important to understand that under the *Strata Property Act* every Strata Corporation may restrict or prohibit rentals by passing a rental restriction or prohibition bylaw. It is also important to understand that, if a Strata Corporation passes a bylaw that restricts or prohibits rentals, every strata lot in the development will eventually be subject to the rental restriction or rental prohibition bylaw unless the strata lot is protected by a Rental Disclosure Statement (RDS).

Effect of RDS

If the RDS has been filed under the *Strata Property Act*, a rental restriction or rental prohibition bylaw does not apply to a strata lot that has been included in the RDS until the earlier of a conveyance by the first purchaser or the expiry of the RDS. In other words, unless the RDS expires earlier than the date of the first conveyance, the RDS protects the developer

and the first purchaser. At the time the first purchaser sells the strata lot, even though the RDS has not expired, the protection provided by the RDS terminates.

Example: RDS filed January 1, 2002. RDS expires January 1, 2102. Purchaser purchases a strata lot from the developer March 1, 2002. Because the RDS does not expire until 2102 the developer and the first purchaser are protected until 2102. However, once the first purchaser sells the strata lot the protection no longer applies to that strata lot and subsequent purchasers would be subject to a rental restriction or rental prohibition bylaw. This is the case even though the expiry date has not been reached. The RDS is no longer effective because it expires on the **earlier** of the sale by the first purchaser or the expiry date.

If the RDS was filed under the *Condominium Act*, the *Strata Property Act* provides that a bylaw restricting or prohibiting rentals does not apply until the earlier of the expiry of the rental disclosure statement, a conveyance by the first purchaser or January 1, 2006 if the strata lot has been conveyed by the first purchaser. Essentially,

this provision protects developers and first purchasers until the expiry of the RDS and subsequent purchasers until January 1, 2006. After January 1, 2006, subsequent purchasers are no longer protected by the RDS. After January 1, 2006, the protection of the RDS ends on the earlier of the sale by the first purchaser or the expiry of the RDS.

Example: RDS filed November 1, 1996. RDS expires July 1, 2010. The developer and first purchaser are protected from a rental restriction or rental prohibition bylaw until July 1, 2010. Subsequent purchasers are protected until January 1, 2006. On January 1, 2006, the developer and first purchaser continue to be protected by the RDS until January 1, 2010; however, subsequent purchasers are no longer protected.

Expiry of RDS

When determining whether a buyer will have the protection of a RDS (either because the buyer is purchasing from the developer under a *Strata Property Act* RDS or because the buyer is a subsequent purchaser under a *Condominium Act* RDS and is looking for protection until

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January 1, 2006), it is necessary to determine whether the RDS has expired.

A RDS filed in 2002 for a Coal Harbour development provided:

The owner developer reserves the right to rent out any or all residential strata lots while it is the first owner of any strata lot for an indefinite period until such time as it ceases to be the first owner of any strata lots.

In this case, the developer created an expiry date for the RDS to be the date the developer sold the strata lot. As a result, the expiry date occurred prior to a first conveyance. The first purchasers did not receive any protection from the RDS. In other cases, the RDS may contain a specific date as the date the RDS expires.

Obtaining a RDS

The RDS for a development offered for sale by the developer is generally included as an exhibit to the Disclosure Statement. Thus, when a buyer is buying from a developer, the buyer should receive a copy of the RDS as part of the Disclosure Statement package.

Section 59 of the *Strata Property Act* requires a RDS to be attached to the Information Certificate (Form B). If the Form B does not contain the RDS, and the Strata Council or strata manager is unable to provide a copy, a copy of the RDS can be obtained from the

Superintendent of Real Estate's office.

Lack of a rental bylaw is no comfort

Many buyers and their agents look at the bylaws to determine whether there is a restriction on rentals. If there are no such bylaws, the buyer may believe or be advised that such a property is appropriate as an investment property.

What such buyers and agents are not considering is that a rental restriction bylaw can be passed by the owners at an Annual General Meeting or Special General Meeting. Such a bylaw needs to be approved by a $\frac{3}{4}$ vote which is a vote of $\frac{3}{4}$ of the people **present at the meeting** in person or by proxy.

If buyers are interested in buying such a strata lot for rental purposes, the agent should be sure that the buyer understands that their ability to rent the strata lot could be affected by a rental restriction or prohibition bylaw at some time in the future.

On occasion, buyers take comfort from the fact that a number of the strata lots are owned by investors and as a result believe that there is little likelihood of a rental bylaw being approved. While investors own the units, such a view may be appropriate; however, relying on who owns other units as the mechanism to entitle an owner to rent his or her strata lot provides fleeting comfort at best. If a number of investors sell their strata lots, the make-up of the owners could change very

quickly and a rental bylaw could subsequently be passed.

In all cases where buyers are not protected by a RDS, even though there is no bylaw which restricts rentals, the buyer should understand that there is a risk that a rental restriction bylaw, which may restrict or prohibit the buyer's right to rent their strata lot, could be passed in the future.

The Abbas decision

As a result of the case of *Abbas v. The Owners, Strata Plan LMS 1921*, a RDS that describes the rental period as "indefinite" may not be valid.

In *Abbas*, the Judge held that a RDS that used the term "for an indefinite period" when referring to the expiry did not comply with the *Condominium Act*. Although there may be reasons why the *Abbas* decision can be distinguished, and therefore may not apply to subsequent cases, buyers who wish to rely on a RDS that uses the term "indefinite" should seek legal advice.



Conclusion

The only assurance a buyer can have that he or she will be able to continue to rent the strata lot for the entire period for which the buyer owns the strata lot is if the buyer is protected by a RDS. In other words:

1. The buyer buys the strata lot from the developer, and
2. The expiry of the RDS is a date far enough in the future that it is irrelevant to the buyer.

In all other cases, buyers should be advised that there is a risk that a rental restriction or rental prohibition bylaw may be passed by the owners at some time in the future.

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