

## Issue #1 – Bylaws Restricting Owners from Renting Their Units

Are Bylaws which prohibit or restrict an owner's right to lease or rent his or her own Unit enforceable?

The short answer is no.

In Alberta, owners of condominium units take title to their individual units in fee simple, which carries with it the right to lease or rent the unit. The *Condominium Property Act* specifically provides that "no bylaw operates to prohibit or restrict the devolution of units or any transfer, lease, mortgage or other dealing with them or to destroy or modify any easement implied or created by this Act" (section 32(5)). The language of the *Act* is unambiguous and clearly set out. In applying section 32(5), the issue is whether the bylaw itself prohibits, restricts or limits any kind of transfer of a unit, and therefore violates the *Act*.

Furthermore, in the event of a conflict between the Bylaws and the *Act*, the *Act* prevails (section 32(7)). Passing a bylaw or restrictive covenant which is contrary to the *Act* is an attempt to contract out of the *Act*, and the case law has consistently found that no one may contract out of the specific provisions of the *Act*.

The very nature of condominiums is that while some restrictions on the use and occupancy of individual units, such as provisions for single-family occupancy, age restrictions of residents, or restrictions on commercial use, are permitted in Alberta, a bylaw that prohibits an owner from renting his or her unit is contrary to the fundamental right of an owner to alienate his or her freehold estate, as provided by the *Act*. Again, the case law consistently upholds this result, and where any bylaws are clearly prohibited under the *Act*, the courts can and should intervene, even though the Condominium Corporation and Board of Directors may have acted reasonably in adopting the bylaw in the first place.

In the event that the Bylaws are found to be unclear in respect of whether they apply to restrict an owner's common law right to use his or her land for all lawful purposes, they will be strictly interpreted against the condominium corporation, since it was the drafter of the Bylaws. This is known as "*contra proferentum*," and it means that where an ambiguity exists, the Bylaws will be interpreted in favour of the party who did not propose, insist upon the inclusion of, or draft the particular term or clause at issue.

In this case, several of the newly added bylaws clearly and directly restrict an owner's right to rent or lease his or her unit for Short Term Rentals (30 days or less), including: 14.1(c)-(d), 14.2 and 14.3. These would most likely be declared invalid by the courts if an application were brought to decide the issue.