



2022 STRATA PROPERTY ACT AMENDMENTS

WHAT DO WE DO NOW?

November 25, 2022 (updated)

By Shawn M. Smith

The amendments to the *Strata Property Act* (SPA) introduced as Bill 44 became law as of November 24, 2022. Those amendments will bring about significant changes for many strata corporations.

The legislation addresses three things:

1. The ability to hold electronic (virtual) meetings without the need for a bylaw authorizing such meetings;
2. An abolishment of the ability of strata corporations to prohibit or limit the rental of strata lots;
3. The prohibition of age restriction bylaws except where based on 55 years of age;

Electronic Meetings

Amendments to sections 45 and 49 of the SPA now permit strata corporations to hold electronic (virtual) meetings without the need for a bylaw authorizing electronic attendance.

Notices of meeting must now specifically contain:

- The date, time and, if its in person, the place of the meeting;
- Instructions for how to attend the virtual meeting;

In order to qualify as a virtual meeting permitted under the SPA certain criteria must be met in terms of the platform used:

- It must allow all persons attending the meeting to communicate with each other; and
- The chair must be able to identify whether someone is an eligible voter;

The latter requirement presumably means having the ability to identify who is able to vote and who is not, and ensure those who are not eligible to vote do not participate in the voting. That might be achieved through designating them as such on screen or excluding them from any polling or voting mechanism.

Notices of meeting which have already gone out will be unaffected. For meetings held between now and March 25 compliance with the new notice requirements is not needed.

Two problematic provisions of Standard Bylaw 27 (Voting) have been excluded from applying to virtual meetings; those being the requirement to issue voting cards and the ability to require a secret ballot.

Strata corporations which have enacted their own virtual meeting bylaws will need to have them reviewed to ensure they do not offend the new SPA provisions.

Rental Bylaws

As of November 25 any bylaw which restricts or limits the rental of strata lots is now unenforceable.

Sections 139 to 144 of the SPA (dealing with rental restrictions and the exceptions to them) have been repealed. This eliminates the ability of strata corporations to pass such a bylaw.

Existing bylaws are affected by s.121 of the SPA. That section prohibits any bylaw which “restricts the right of an owner of a strata lot to freely sell, lease, mortgage or otherwise dispose of the strata lot or an interest in the strata lot”. The old exception applicable to rental bylaws under s.121(2)(a) has also been repealed, making any existing by unenforceable under that section.

This change does not affect bylaws pertaining to short term accommodation as they are not tenancies, but rather licenses. Such bylaws will remain in effect (although if the bylaw refers to “short term rentals” that might be an issue).

A new s.141 has been enacted. It provides as follows:

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.

This means that strata corporations will be unable to have any control over who a strata lot is rented to. Nor will strata corporations be able to impose requirements on an owner as a precondition to renting. The only requirement that a strata corporation will be able to impose with respect to the process of renting a strata lot is that the owner submit a Form K (S.146 of the SPA remains in force) or that the tenant provide certain information such as their name and contact information.

Prohibitions on subletting would also appear to run contrary to s.141.

Tenants, however, are required to comply with the bylaws. Like owners, they can be fined for breaches and can be ordered by the Civil Resolution Tribunal to stop behaviour which is in contravention of the bylaws. Changes to the residential tenancy regime to allow strata corporations to employ the eviction provisions of s.138 of the SPA have also been promised.

Strata corporations should ensure their bylaws (particularly those related to use of property) in fact refer to tenants. If they do not tenants are arguably not required to comply with them. Strata corporations should also familiarize themselves with the procedures for dealing with breaches of the bylaws by tenants.

An owner who is currently renting in contravention of a bylaw will no longer be in breach of that bylaw. However, they will be liable for any breach that occurred before November 25. Similarly, an owner renting based on a hardship need not prove hardship to continue renting. They can simply now rent.

Age Bylaws

S.123 of the SPA, which addressed both pet and age bylaws, has also been amended. It now addresses only pets and contains virtually identical provisions to what was in the prior s.123.

A new section 123.1 has been enacted to address age bylaws. It provides:

- (1) The strata corporation must not pass a bylaw that restricts the age of persons who may reside in a strata lot except as permitted by subsection (2).
- (2) The strata corporation may pass a bylaw that requires one or more persons residing in a strata lot to have reached a specified age that is not less than 55 years.

For strata corporations who do not currently have an age restriction bylaw, this means that if they wish to enact one the must use an age that is 55 or greater. For example, bylaws referring to 19 or 40 are not permitted. Bylaws referring to 55 or 60 are okay.

Where a strata corporation has an existing age restriction bylaw, further amendments to s.121 make those unenforceable if they do not refer to 55. If the bylaw does not meet the criteria of s.123.1(2) it cannot be enforced. This means that if a strata corporation has a bylaw that refers to an age less than 55 it must either:

- (a) enact a new bylaw which uses 55 or higher; or
- (b) have no age bylaw at all.

In the meantime, the existing bylaw which refers to an age less than 55 will not be enforceable except with respect to breaches that occurred before November 25.

There are three exemptions set out in s.123.2 of the SPA to an enforceable age restriction bylaw. Those are:

- (a) any person who was living in the strata lot before the bylaw was passed (and what not contravening a prior age bylaw);
- (b) a caregiver providing support to a person who “is dependent on caregivers for continuing assistance or direction because of disability, illness or frailty”; and
- (c) any other exemptions permitted by regulation (none currently exist).

The criteria for the caregiver exemption will undoubtedly create questions in its application. What will be required to prove the criteria has been met, particularly “frailty”?

As before, the age bylaw will apply to owners, tenants and occupants. The inability to restrict rentals does not mean tenants need not comply with other use bylaws.

As a result of these changes, strata corporations will likely need to review their bylaws and ensure they are compliant with the new provisions. Bylaws which are otherwise unenforceable should be repealed.

This article is intended for information purposes only and should not be taken as the provision of legal advice. Shawn M. Smith is lawyer whose practice focuses on strata property law. He frequently writes and lectures for strata associations. He is a partner with the law firm of Cleveland Doan LLP and can be reached at (604)536-5002 or shawn@clevelanddoan.com. He can be followed on Twitter @stratashawn.