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Hardship Exemptions

If a strata corporation's bylaw restricts the rental of a residential strata unit, the owner may apply to the strata council for an exemption because the bylaw causes the owner hardship. Although section 144 of the *Strata Property Act* creates the hardship exemption, it does not, unfortunately, define what hardship is.¹

In *Als v. Strata Corp. NW 1067*, the Supreme Court of British Columbia recently gave strata councils, and owners, some helpful guidelines for assessing hardship applications.² In *Als*, the owner bought his residential condominium in Richmond in 1993 for \$99,000. In 2001, the outstanding balance of his mortgage was \$73,000. The 2001 assessed value was \$52,000.

In 1999, the owner learned his employer required him to live abroad. Consequently, in his absence, the owner wished to rent his unit to a tenant. The strata corporation's bylaws prevented the rental of the owner's strata lot.

In September 1999, the owner asked the strata council for a hardship exemption from the rental restriction. The owner stated, in part,

"Unfortunately, I am not willing to sell my property at this time, as the appraised value of the property is considerably less than the value [at which] I purchased it.

Therefore, I do not wish to incur a rather substantial loss at this time by selling my property."

The strata council refused the

owner's application. It wrote to the owner saying, in part,

"...No mention of financial loss was made or figures given to suggest or prove that you are going to suffer hardship due to your move to the States. Accordingly, Council voted that hardship had not been proven..."

The owner failed...to provide sufficient information to show that the rental restrictions caused the owner hardship.

In summer 2001, the owner applied again, through his lawyer, to the strata council for a hardship exemption. Although the council asked the owner to provide a financial statement, he refused on the ground the request was intrusive. The owner did, however, provide some financial information. He indicated he received an incentive from his employer during his absence from Canada, and that his employer paid the owner's rent abroad. The owner also disclosed his "personal disbursements" as \$1,426 per month, including car rental, parking, gas, telephone, cable TV, international banking charges, and household maintenance supplies for his respective homes, abroad and in Richmond.

Given the unit's low assessed value in 2001, the owner's lawyer suggested it was not reasonable for the owner to sell his condo in current market conditions. The lawyer also suggested that the owner's insurance coverage might be in jeopardy because of the extended vacancy of his unit. Apparently, the owner did not provide evidence to substantiate an insurance policy breach, or to show that optional coverage was not available.

The strata council denied the owner's second hardship application on the same ground as before. The owner failed, in Council's view, to provide sufficient information to show that the rental restrictions caused the owner hardship.

When the owner applied to the Supreme Court for a remedy, the Court upheld the strata council's decision. In *Als*, the Court found the strata council correctly refused the owner's hardship application because the owner failed to supply sufficient information to allow council to decide whether the owner actually suffered hardship.

The *Als* case makes several things clear.

1. The definition of "hardship" in the *Shorter Oxford English Dictionary* may serve as a guideline: "hardness of fate or circumstance, severe toil or suffering, extreme privation."
2. An owner who applies for a hardship exemption must present sufficient evidence to show the rental restriction causes hardship *to that owner*. The Court said, in part,³

“It is also the case that the bylaw must cause hardship ‘to the owner’...It is not enough to show a type of hardship which might necessarily apply to all non-resident owners. In the case at bar, the only financial information available from Mr. Als is that his monthly expenses are increased because he is maintaining a home in Paris as well as in Richmond. However, a duplication of expenses flows automatically for all non-resident owners and, accordingly, this duplication will not be a factor unless it can be shown that this duplication has produced hardship for a particular owner because the duplication cannot be avoided or afforded. The duplicated expense for a very rich owner would not create a hardship, whereas the duplication of expense without corresponding rental income might create a hardship for an owner of modest means. The duplicated expense for someone who is not in a position to move back into the strata unit may cause a hardship which cannot be avoided as there is a good reason why an owner cannot move into the strata unit in order to avoid the duplication.”

Although the Court did not address the extent of proof required, presumably an owner must show hardship on a balance of probabilities—that is, the owner must show it is more likely than not that the restriction creates hardship to that owner.

3. Although it is relevant to show that the strata unit has decreased in market value, such that the owner will suffer a loss if forced to sell the unit, this factor alone is not sufficient to prove hardship *without evidence of the effect of the loss on the particular owner’s financial position.* ▲

¹ *Strata Property Act*, S.B.C. 1998, c. 43, as amended

² *Als v. Strata Corp. NW 1067*, [2002] B.C.J. No. 145; 2002 B.C.S.C. 134 (S.C.). Readers may obtain a copy of this decision online at the Website of the British Columbia Superior Courts: www.courts.gov.bc.ca/#Other-Links. Select “Search the Reasons for Judgment Database.”

³ *Als v. Strata Corp. NW 1067*, [2002] B.C.J. No. 145 at para. 23 per Burnyeat, J.

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