



## AGE RESTRICTION BYLAW EXEMPTIONS

May 2023

By Shawn M. Smith

Despite strata corporations having the ability to pass a bylaw restricting the age of persons who may reside in a strata lot, that power is not without its limits. S.123.2 of the Strata Property Act (SPA) provides for certain statutory exemptions to an age restriction bylaw. Those are:

1. An “under age” person living in the strata lot at the time the bylaw was passed;
2. An “under age” caregiver; and
3. Other prescribed exemptions;

In order to qualify for the first of these exemptions a person must have been residing in the strata lot “immediately before the bylaw was passed”. Residency is a question of fact, meaning that the person relying on this exemption must establish that their presence was more than temporary. In most cases, that will not be an issue.

When it comes to the caregiver exemption, the SPA does not set any particular qualifications for the caregiver to meet (i.e. they do not need to be licensed or trained). However, the resident must establish they are “dependent on caregivers for continuing assistance or direction because of disability, illness or frailty”. The terms “direction” and “frailty” raise a number of questions regarding how broad the exemption might prove to be.

Until May 1 there were no prescribed exemptions. That has now changed with the enactment of Regulation 7.01. That amendment created three new exemptions:

1. A child (being a person under 19) being cared for by a specified resident of the strata lot;
2. A person over 19 who was cared for by a specified resident while they were under 19; and
3. A spouse (being someone who is married or living in a marriage like relationship) of a specified resident.

A “specified resident” is a person who either meets the threshold age of the bylaw or is exempt because they lived there before the passage of the bylaw.

Each of these new exemptions has the potential to curtail the scope of an age restriction bylaw.

The “child exemption” is not restricted to a person’s biological offspring. It simply requires that the resident be *one of* the child’s caregivers. This would include grandchildren and even children with no direct biological connection if the specified resident cares for them. There is no requirement that the child have been living there at any particular time; meaning it would apply to children born to or adopted by a specified resident or simply brought into the strata lot to be cared for by the specified resident.

This second category is presumably intended to allow a child to remain in the strata lot once they turn 19. However, it has the potential to allow adult children to move back in with a parent. The regulation does not specify where the specified resident had to be providing care to that person before they turned 19. It does not appear to need to have been in the strata lot.

A spousal exemption is a practical and logical exemption. The definition used is quite flexible in that it does not require having been in a marriage like relationship for any particular length of time. It is simply the nature of the relationship that matters. However, the exemption applies only so long as the age compliant spouse lives in the strata lot. Should they die or otherwise cease residing there, the “under age” spouse will no longer be exempt.

Going forward there will undoubtedly be many questions to be answered about how these exemptions apply. Each claim for an exemption will need to be considered on its own facts and strata corporations will need to develop mechanisms and processes to assess whether a person qualifies for an exemption.

*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](mailto:shawn@clevelanddoan.com). He can be followed on Twitter @stratashawn.*