

SHORT-TERM RENTAL ACCOMMODATIONS ACT

A SUMMARY OF BILL 35 — 2023: *SHORT-TERM RENTAL ACCOMMODATIONS ACT*

INTRODUCTION

The Government of British Columbia has introduced Bill 35, which, if passed, would enact the *Short-Term Rental Accommodations Act* (the “**Act**”).¹ The Act is intended to regulate and curtail the listing of rentals of less than 90 days or as otherwise prescribed by regulation (“**Short-Term Rentals**”) in communities throughout the province as part of its *Homes for People Action Plan* introduced in the spring of 2023.²

According to the Government of B.C.’s technical briefing (the “**Technical Briefing**”),³ listings for Short-Term Rentals in BC have increased significantly in recent years, and citing research from McGill University, Short-Term Rentals are responsible for taking more than 16,000 housing units out of the long-term rental market.⁴ Coupled with British Columbia’s low vacancy rate for long-term rental stock and the cost of rent in most communities,⁵ the *Act* has been introduced in legislature to restrict Short-Term Rentals in many communities throughout the province. The *Act* aims to: (1) increase fines and strengthen enforcement tools for local governments, (2) return short-term rentals to the

long-term rental market and (3) establish provincial rules and enforcement.

APPLICATION OF THE ACT

As mentioned above, the *Act* considers a Short-Term Rental to be a property rental of less than 90 consecutive days (or as otherwise prescribed by regulation); therefore, the requirements and restrictions under the *Act* will apply to rentals that fall within that time period.

Under Sections 3 and 4, the *Act* will not apply to hotels, motels, other “accommodation services providers” prescribed by regulation, or non-participating First Nations.⁶ Modern Treaty Nations will also be exempt, but will be able to opt into the *Act*, if desired.

REQUIREMENTS FOR SHORT-TERM RENTAL HOSTS AND “OFFERORS”

Information Requirement

If a Short-Term Rental is being offered for rent, regardless of whether the offer is by a homeowner, renter or agent of a homeowner or renter, the offer

will have to include: a valid registration number, a valid business licence number (if a business licence is required to operate a Short-Term Rental), and any other information prescribed by regulation.⁷

Principal Residence Requirement

Unless otherwise specified in regulations, Section 14 of the *Act* will essentially prohibit a person from offering a Short-Term Rental for rent unless the Short-Term Rental being offered is in that person's principal residence, in a secondary suite or other accessory dwelling unit on the same property as the principal residence such as a basement suite or laneway home, or in both (the "**Principal Residence Requirement**").⁸ It is expected that regulations will be prescribed such that the Principal Residence Requirement will apply to communities with a population of more than 10,000 people or that are adjacent to larger communities while others will be exempt.⁹

Exemption from Principal Residence Requirement

As discussed in more detail below, it is expected that Short-Term Rentals in certain communities prescribed by regulation will be exempt from the Principal Residence Requirement.¹⁰ Under Section 15 of the *Act*, however, a local government will have the ability to request its geographic area to be added to or removed from land designated by regulation as exempt from the Principal Residence Requirement. The expectation based on the Technical Briefing is that only non-exempt communities with over a 3% vacancy rate will be eligible to request an exemption from the Principal Residence Requirement, whereas all exempt communities may request to opt in to the Principal Residence Requirement.¹¹ Accordingly, owners and operators of Short-Term Rentals in exempt communities will need to be aware of any requests made by their local government in order to avoid being offside of the

Principal Residence Requirement.

It is also anticipated that future regulations will set out the types of properties to be exempt from the Principal Residence Requirement, such as timeshares and fishing lodges.¹²

Additional Requirements Imposed by Local Governments

Despite the Principal Residence Requirement set out in the *Act*, local governments will have the ability to impose further requirements impacting Short-Term Rentals.¹³ The Provincial Government has described the Principal Residence Requirement as a "province-wide floor for communities with populations over 10,000 people."¹⁴ As such, owners and operators of Short-Term Rentals will have to ensure that they comply with local government bylaws as well as the requirements under the *Act*.

Registration of Short-Term Rental listing in the Registry

The Province will be establishing a registry for all Short-Term Rental hosts and platform service providers (the "**Registry**").

Under Section 6 of the *Act*, subject to any regulations that may be prescribed, all Short-Term Rental offers will have to be registered in the Registry.

An application for registration will be required to include:

- 1) the address of the property where the Short-Term Rental is being offered;
- 2) the name, telephone number, address, email address and fax number (if applicable) of the person in possession of that property and responsible for arranging the Short-Term Rental;

- 3) the name, telephone number, address, email and fax number (if applicable) of any other person responsible for arranging the Short-Term Rental;
- 4) the registration number assigned to the Short-Term Rental under the Registry;
- 5) the business licence number, if applicable; and
- 6) any other information required under regulation.

An application fee may also be imposed on applicants.

If the Principal Residence Requirement Applies

If the Principal Residence Requirement applies to the Short-Term Rental offer, a declaration, which will be set out under regulation, will have to be made along with the application for registration.

Lawful Non-Conforming Use

Non-conforming use permits a landowner to carry on a use of land where that use was ongoing and predates the enactment of a land use regulation or zoning bylaw that subsequently prohibited that use. This exception is enabled under the non-conforming use exceptions in the *Local Government Act*¹⁵ and *Vancouver Charter*.¹⁶ Under Section 36 of the Act, the exception in the *Local Government Act* and *Vancouver Charter* will no longer apply to Short-Term Rentals. Consequently, Short-Term Rental Operators who have relied upon lawful non-conforming use to operate Short-Term Rentals in communities prior to the adoption of regulations or bylaws prohibiting such activities will no longer be able to do so.

REQUIREMENTS FOR PLATFORM SERVICE PROVIDERS

Each platform service provider, such as AirBnB and VRBO, will be required to:

- 1) have a British Columbia representative;

- 2) allow a Short-Term Rental offeror to post on the platform all information it is required to post under the *Act*;
- 3) confirm the validity of the Short-Term Rental offeror's registration number; and
- 4) record, maintain and disclose, to the Minister, Short-Term Rental information provided to the platform service provider and any other prescribed information.

Additionally, where a local government requires Short-Term Rental offerors to hold a business licence and determines that a Short-Term Rental offer is not compliant with the business licence, the local government will be able to request the platform service provider to remove the Short-Term Rental offer.

Registration

Under Section 7 of the *Act*, subject to any applicable regulations, each platform service provider will have to be registered in the Registry, and each application for registration will be required to contain the platform service provider and platform representative's name, telephone number, address, email address and fax number (if applicable), as well as any other information required under regulation. An application fee may also be imposed.

IMPACT OF THE ACT ON LOCAL GOVERNMENTS

The *Act* will be welcomed by regional districts and municipalities in British Columbia due to the many new tools that will be offered to local governments to regulate and restrict the operation of Short-Term Rentals within their communities. Additionally, the ability to levy larger monetary penalties for the unlawful operation of Short-Term Rentals will grant local governments a greater ability to penalize operators who

fail to comply with local bylaws regulating Short-Term Rentals. A summary of those aspects of the *Act* which will be of interest to local governments is set out below.

Business Licensing for Regional Districts

Should the *Act* be enacted by the legislature, one of the most notable changes for local governments will be the amendments to the *Local Government Act* that will be implemented under Part 6 – Consequential and Related Amendments of the *Act*. This will permit regional districts to enact business licence bylaws. This change will result in substantial new powers for regional districts to regulate certain business activities within their boundaries.

The *Act* will see Section 326.1 [Bylaw *authority in relation to business regulation*] incorporated into the *Local Government Act*. This will allow a regional district to regulate businesses through business licensing requirements imposed by the regional district. Whether the intention of these provisions is to allow regional districts to regulate all sorts of business or only Short-Term Rentals is not known at this stage. As provided in Section 326.1, regulations may be established that will set out restrictions, conditions or requirements related to the regulation of business under this section.¹⁷ Depending on the regulations made, it may be that the enactment of business licence bylaws will be limited to the establishment of licensing requirements for Short-Term Rentals, however, these new powers conferred to regional districts could end up being much broader in scope. Once these regulations are made local governments will have a clear understanding of just how broad or narrow these business licensing powers will be for regional districts.

The Technical Briefing indicates that this will help regional districts gain a better understanding of the number and type of Short-Term Rentals operating in their communities.¹⁸ Additionally, the power to regulate businesses through a business licensing regime will

provide regional districts with the power to police and penalize Short-Term Rental operators who breach the conditions of their business licence or operate without a valid and subsisting business licence.

Increased Penalties

There are currently 30 municipalities in British Columbia that are regulating the operation of Short-Term Rentals in their communities through locally enacted bylaws. Presently, the penalties that may be levied through bylaw enforcement tickets for violations of these bylaws are limited to \$1,000.00 by Section 2 of the *Community Charter Bylaw Enforcement Ticket Regulation*.¹⁹ According to the Technical Briefing, the penalties that may be imposed on operators for violating local bylaws will be changed through the implementation of regulations to the *Act* to increase the fines that may be imposed for contraventions to local government bylaws from \$1,000.00 to \$3,000.00 per day.²⁰

Additionally, regional districts will be granted new powers through amendments to Section 416 of the *Local Government Act*, which will allow them to establish one or more of the following penalties to which a person convicted of an offence in a prosecution under the *Offence Act*²¹ will be liable for:

- 1) a minimum fine (as set by a regional district through its business licence bylaw);
- 2) a maximum fine of up to \$50 000;
- 3) in the case of a continuing offence, for each day the offence continues, either or both of the minimum fine or the maximum fine; or
- 4) imprisonment of not more than 6 months.

Where a regional district does not set out a penalty in a business licence bylaw, Section 4 of the *Offence Act* provides that the penalty will be to a maximum of

\$2,000.00 or imprisonment of not more than 6 months, or both.

According to the Technical Briefing, upon Royal Assent of the *Act*, the increased penalties for municipal bylaw infractions will come into force. We anticipate that such changes will incentivize local governments to step up prosecutions against non-compliant operators given the added financial penalties that could be imposed. Additionally, we expect that the business licence bylaws that will be enacted by regional districts will contain provisions setting out the maximum allowable penalty to provide them with the power to impose the most penalizing fines on violators of their business licence bylaws regulating Short-Term Rentals.

Lawful Non-Conforming Use

As mentioned above, the *Act* will prohibit the operation of Short-Term Rentals under the exception of lawful non-conforming use. This means that local governments will be able to impose penalties and take enforcement action on operators that have operated Short-Term Rentals in zones or geographic areas within their jurisdictions that currently rely on lawful non-conforming use.

As a result, local governments will be in a position to pursue enforcement action against Short-Term Rental operators who previously were immune from such actions where the Short-Term Rental use predated bylaws or amendments to bylaws prohibiting Short-Term Rentals as a use in a particular zone or geographic area.

Communities To Which the Principal Residence Requirement Will Apply and Exemptions

The Principal Residence Requirement is intended to apply to communities with a population of more than 10,000 people or to those that are adjacent to larger communities. As set out in the Technical Briefing, this will result in the imposition of this requirement for the lawful operation of Short-Term Rentals in the following cities:

Vancouver; Surrey; Burnaby; Richmond; Abbotsford; Coquitlam; Kelowna; Langley (Township); Saanich; Delta; Nanaimo; Kamloops; Chilliwack; Victoria; Maple Ridge; North Vancouver (District); New Westminster; Prince George; Port Coquitlam; North Vancouver (City); Langford; Vernon; West Vancouver; Mission; Penticton; West Kelowna; Campbell River; Port Moody; North Cowichan; Langley (City); Courtenay; Squamish; White Rock; Fort St. John; Cranbrook; Salmon Arm; Pitt Meadows; Colwood; Port Alberni; Oak Bay; Esquimalt; Central Saanich; Lake Country; Sooke; Comox; Powell River; Parksville; Dawson Creek; Sidney; Prince Rupert; North Saanich; Summerland; Terrace; View Royal; Coldstream; Nelson; Williams Lake; and Sechelt.²²

The following adjacent communities will also be covered by the Principal Residence Requirement:

Qualicum Beach; Metchosin; Duncan; Cumberland; Highlands; Anmore; Pouce Coupe; and Belcarra.²³

The Technical Briefing indicates that it is the intention of the Provincial Government to exempt certain communities from the Principal Residence Requirement. The exemption is meant to apply to British Columbia's fourteen resort municipalities²⁴, mountain resort areas, most municipalities under 10,000 (except those adjacent to larger municipalities), regional district electoral areas and island trusts.²⁵ However, under Section 15 of the *Act*, a local government will have the option to, by resolution, to request that its geographic area be added to or removed from land designated as exempt from the Principal Residence Requirement.

This means that, should local governments exempt from the Principal Residence Requirement wish to opt in to this part of the *Act* to impose further restrictions on the operation of Short-Term Rentals within their communities, they may do so. Therefore, merely because a community is exempt does not mean that the Principal Residence Requirement will never apply to these

municipalities. This will be subject to the regulations made which will prescribe how a local government may request that the Principal Residence Requirement be imposed on the geographic area of the local government. Conversely, local governments to which the Principal Residence Requirement applies may, subject to regulation, request that its geographic area be removed from the Principal Residence Requirement.

We would interpret Section 15 as only allowing a local government to opt its entire geographic area in or out of the Principal Residence Requirement when considering the reference in these provisions to the ability to “remove or add the geographic area of the local government if the local government wishes”. Therefore, unless prescribed differently by regulation, it would appear that a local government cannot request the Province to include or exclude specific zones, areas or locations within its boundaries from the Principal Residence Requirement. It would appear that the implications of Section 15 are that this requirement is an all-or-nothing application to a local government's geographic area and there will be no specific carve outs to particular areas within the boundaries of a regional district or municipality that opts in or out unless the regulations prescribe differently.

COMPLIANCE, ENFORCEMENT BY THE PROVINCE

Under Part 4 [*Compliance and Enforcement*] of the *Act*, a director appointed by the minister will be able to:

- conduct investigations to ensure compliance with the *Act* and its regulations;
- require a person to provide to the director all records in that person's possession or control related to an investigation;
- issue a compliance order for a person to comply with the *Act* or its regulations;

- order a person to pay an administrative penalty for failing to comply with the *Act*, its regulations, an investigation, or an order by the director;
- file a compliance order with the Supreme Court of British Columbia to have the order enforceable as an order of the court; and
- apply to the Supreme Court of British Columbia for an injunction to restrain a person from contravening, or require a person to comply with, the *Act* or its regulations.²⁶

The Provincial Government has also announced that it will launch a Provincial Short-Term Rental Compliance and Enforcement Unit in order to track compliance, issue orders and administer penalties for violations.²⁷

TIMELINE

According to the Technical Briefing, if enacted, the *Act* and its regulations will be implemented in a phased manner. On Royal Assent of the *Act*, fines for municipal bylaw infractions will increase, and regional districts will have the ability to regulate businesses. On May 1, 2024, the Principal Residence Requirement will apply to properties in non-exempt land, lawful non-conforming use will no longer apply to Short-Term Rentals, and Short-Term Rental platforms will be required to display business licences. Over the summer of 2024, Short-Term Rental platforms will be required to share data regarding Short-Term Rental listings with the province, and in late 2024, the Registry will be in place.

CONCLUSION

The *Act* is intended to address low vacancies for long-term rental accommodations across the province by removing Short-Term Rentals and returning them to the market for long-term rental accommodation. The restrictive approach taken by this legislation—removing the lawful non-conforming use exception and limiting

Short-Term Rentals to principal residences—means that thousands of apartments, condominiums and secondary residences may be made available to long-term renters. However, critics of the *Act* raise that this legislation will have knock on effects to the tourism industry and reduce the number of accommodations available for travelers and those visiting the province on a short-term or transient basis.²⁸

In the interim, owners and operators of Short-Term Rentals, platform service providers, and local governments will need to familiarize themselves with the provisions of the *Act* in anticipation of its adoption by legislature and the coming into force of such provisions and requirements throughout 2024 by way of regulation.

Owners and operators will need to determine whether their Short-Term Rental is only authorized under lawful non-conforming use and, if they are within a non-exempt community, whether their Short-Term Rental complies with the Principal Residence Requirement.

Local governments will have to consider how they will utilize the *Act* to regulate Short-Term Rentals within their boundaries. Regional districts, in particular, will need to consider adopting business licence bylaws to regulate Short-Term Rentals and set out the desired penalties within these bylaws in conformity with the new powers they will be granted. With respect to the Principal Residence Requirement, communities that are exempt will need to consider whether they wish to request to opt -in, and communities not exempt will need to consider whether further restrictions on Short-Term Rentals are desirable.

In summary, owners and operators, and platform service providers will be subject to new restrictions for Short-Term Rentals, and local governments will be provided with new tools under the *Act* through which they may regulate Short-Term Rentals and address issues with housing supply. To what degree local governments will

embrace these changes will become more apparent upon implementation; however, we anticipate that many will take advantage of these new powers to address the operation of Short-Term Rentals in their jurisdiction.

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Footnotes:

1. Bill 35, *Short-Term Rental Accommodations Act*, 4th Sess, 42nd Parl, British Columbia, 2023 [*Act*].
2. See Government of BC, “Homes for People” An action plan to meet the challenges of today and deliver more homes for people, faster” (Victoria: Government of BC, 2023) <https://news.gov.bc.ca/files/Homes_For_People.pdf>.
3. See Government of BC, “Short-Term Rental Accommodations Act: Technical Briefing” (Victoria: Government of BC, 2023) <https://news.gov.bc.ca/files/ShortTermRental_Technical_Briefing.pdf> [*Technical Briefing*].
4. See *ibid* at 5.
5. See *ibid* at 4.
6. See *Act*, *supra* note 1, ss 3-4.
7. See *ibid*, s 13.
8. See also *Technical Briefing*, *supra* note 3 at 11.

9. *Ibid.*
10. See *ibid* at 11-12.
11. See *ibid* at 12.
12. See *ibid* at 14.
13. See *Act*, s 2.
14. *Technical Briefing*, supra note 3 at 12.
15. RSBC 2015, c 1, ss 528-535.
16. SBC 1953, c 55, s 568.
17. See *Act*, supra note 5, s 42.
18. See *Technical Briefing*, supra note 3 at 10.
19. BC Reg 239/2010, s 2.
20. See *Technical Briefing*, supra note 3 at 10.
21. RSBC 1996, c 338.
22. See *Technical Briefing*, supra note 3 at 12.
23. *Ibid.*
24. These include the City of Fernie, Town of Golden, Village of Harrison Hot Springs, District of Invermere, City of Kimberley, Town of Osoyoos, Village of Radium Hot Springs, City of Revelstoke, City of Rossland, Sun Peaks Mountain Resort Municipality, District of Tofino, District of Ucluelet, Village of Valemount, and the Resort Municipality of Whistler.
25. See *Technical Briefing*, supra note 3 at 11.
26. See *Act*, supra note 1, ss 19-31.
27. See *Technical Briefing*, supra note 3 at 15.
28. See e.g., Katie DeRosa, "Update: B.C. takes aim at short-term rentals with steeper fines, principal residence rule", *Vancouver Sun* (16 October 2023), online: <vancouver.sun.com>.



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Kai obtained his Juris Doctor from the Peter A. Allard School of Law at The University of British Columbia and was called to the Bar of British Columbia in May 2022. His law school experience included competing in the 2021 Adam F. Fanaki Competition Law Moot, where he and his moot partner were awarded Best Factum - Appellant, as well as volunteering with Pro Bono Students Canada, for which Kai was co-recipient of the 2021 Honourable Donna J. Martinson Access to Justice Award. Prior to law school, Kai obtained his Bachelor of Applied Science in Mechanical Engineering with Distinction from The University of British Columbia. Thereafter, he spent over three years designing and implementing process improvements for glass fabrication with a focus on laminated glass.

Our lawyers combine legal experience in local government, commercial real estate development, and construction law to provide legal services to local governments, owners, builders and developers on a range of projects, from concept to completion, and beyond.

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