

**Condo Smarts**

Headline: Deal with smoking before it becomes a nuisance  
Topic: Smoking  
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Written by: Tony Gioventu

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**Dear Condo Smarts:** Is a non smoking bylaw in a strata corporation enforceable? Our strata corporation is a 24 unit apartment building in Nanaimo. We have a number of people who are smokers in our building, and we have tried to pass a bylaw on a number of occasions, where smoking would be prohibited in the building, because the smoke migrates to other units. Because the smokers hold more than 25% of the votes, they always defeat the bylaw. Their claim is a right to smoke in their units, even though residents in adjacent units can smell the smoke. Are there other possible solutions so we can find some common ground between owners?

*Cara L.*

**Dear Cara:** The Standard Bylaws of the Strata Property Act have a provision that relates to nuisance in a strata lot. A strata lot owner or resident is entitled to reasonably quiet uninterrupted use and enjoyment of their strata lot. A nuisance may be a number of conditions that the strata corporation ( council ) have an obligation to address and enforce under the bylaws. Noise, odour and contamination by activities that produce smoke or byproducts, may all be a reasonable part of a nuisance complaint. In addition to being a nuisance, smoking may also be a health hazard that if unchecked, could result in a complaint with the Human Rights Tribunal. A decision issued May 14<sup>th</sup> by the Tribunal, addresses a complaint between owners and their strata council that claimed discrimination in the area of accommodation service or facility, on the basis of physical disability contrary to section 8 of the Human Rights Code. The claim was against the strata corporation, alleging that the second hand smoke of co-residents from the limited common property areas of their complex, infiltrated their suite, exacerbated physical disabilities, and that despite their complaints and efforts, the strata corporation failed to adequately or appropriately respond to or accommodate them. Their claim was not opposed by the strata corporation. The strata corporation had attempted to address the issues of smoking through limited bylaw amendments although they did not sufficiently address the situation. Even though the owners no longer reside in the strata corporation, they were awarded damages and the strata corporation was ordered to cease its

discrimination and refrain from committing a similar contravention in the future. The decision can be found at [www.bchrt.bc.ca](http://www.bchrt.bc.ca). Enter strata into the search field for decisions. The answer to Cara's first question, " can a bylaw prohibit smoking in a strata corporation?" requires a strata corporation to consider the principles of nuisance and the Human Rights Code. A strata corporation is its own "public" and the provisions of the Human Rights Code do apply to strata corporations. In addition, nuisance is a complaint that strata corporations must take seriously if the actions affect use and enjoyment and the well being of the residents. There are defensible reasons why a bylaw prohibiting smoking entirely within a building may be justified. Older wood frame buildings often have little climate barrier proofing between the units resulting in cross contamination of living spaces when it comes to cooking odours and 2<sup>nd</sup> hand smoke. This can also be an exposure from exterior activities like smoking on balconies. There are also provincial regulations that address smoking in public spaces and set out very specific requirements for location away from buildings and entries, in a manner where the smoke may be exposed to other parties. Before a strata corporation considers a bylaw that limits smoking in a strata lot or the building, get legal advice on your specific conditions and what you are attempting to control. No two buildings are the same and no two conditions in the communities are the same.

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