

# Condominium Home Owners Association

A non-profit association serving strata owners since 1976

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## Bylaws, Strata Lots, Smoking and Second Hand Smoke

The health hazards and property damage of cigarette smoke are conditions that most home owners are well aware of. In multi family dwellings where owners live in close quarters, share common patios, exhaust systems, hallways, underground parking garages, decks and balconies and recreational facilities, the dispute over second hand smoke is more evident. No longer is there a 12 foot hedge separating neighbour from neighbour. In many multi family homes only an uninsulated wall covered with sheet rock separates living spaces. The ventilation systems are often jointly piped, and many buildings function without air pressurization systems which allow odours from cooking, smoke, and living conditions to penetrate the common hallways. Add to this, exhaust outlets with fans that function at low capacity and are insufficient to remove the smoke from the buildings or exhaust near windows of adjacent homes due to limited exterior space. Finally, there is the ongoing effect of the elevator shafts, which if not properly corrected with hallway pressurization, will create a chimney affect thereby reducing the quality of air as you ascend through the building. All of these factors of basic building designs contribute to an ongoing dispute in multi family buildings as to whether the strata may or may not adopt bylaws that limit or restrict smoking in strata lots, or on the common property. Both *the Strata Property Act* and the Standard Bylaws of the Act elude to the capacity of bylaws where the actions of one owner may affect another owner.

### **Strata Law: Strata Property Act Sections 119 - 121**

#### ***Nature of bylaws***

**119** (1) *The strata corporation must have bylaws.*

(2) *The bylaws may provide for the control, management, maintenance, use and enjoyment of the strata lots, common property and common assets of the strata corporation and for the administration of the strata corporation.*

#### ***Standard Bylaws***

**120** (1) *The bylaws of the strata corporation are the Standard Bylaws except to the extent that different bylaws are filed in the land title office.*

(2) *On deposit of the strata plan an owner developer may file bylaws that differ from the Standard Bylaws.*

#### ***Unenforceable bylaws***

**121** (1) *A bylaw is not enforceable to the extent that it*

(a) *contravenes this Act, the regulations, the Human Rights Code or any other enactment or law,*

(b) *destroys or modifies an easement created under section 69, or*

(c) *prohibits or 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.*

(2) *Subsection (1) (c) does not apply to*

(a) *a bylaw under section 141 that prohibits or limits rentals,*

(b) *a bylaw under section 122 relating to the sale of a strata lot, or*

(c) *a bylaw restricting the age of persons who may reside in a strata lot.*

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## **Strata Property Act Standard Bylaw 3**

### ***Use of property***

- 3** (1) *An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that*
- (a) causes a nuisance or hazard to another person,*
  - (b) causes unreasonable noise,*
  - (c) unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot,*
  - (d) is illegal, or*
  - (e) is contrary to a purpose for which the strata lot or common property is intended as shown expressly or by necessary implication on or by the strata plan.*
- (2) *An owner, tenant, occupant or visitor must not cause damage, other than reasonable wear and tear, to the common property, common assets or those parts of a strata lot which the strata corporation must repair and maintain under these bylaws or insure under section 149 of the Act.*
- (3) *An owner, tenant, occupant or visitor must ensure that all animals are leashed or otherwise secured when on the common property or on land that is a common asset.*
- (4) *An owner, tenant or occupant must not keep any pets on a strata lot other than one or more of the following:*
- (a) a reasonable number of fish or other small aquarium animals;*
  - (b) a reasonable number of small caged mammals;*
  - (c) up to 2 caged birds;*
  - (d) one dog or one cat.*

There are several questions that a strata corporation must consider if they adopt a non-smoking bylaw that relates to either the strata lots, common property or limited common property.

- Does the strata corporation have jurisdiction over the lifestyle activity of a strata lot owner, within a strata lot, if the owners'/residents' activities are not causing a nuisance or hazard with any other person or unreasonably interferes with the rights of another person to use and enjoy the common property, common assets or another strata lot?
- Does the building age or condition create situations where the activity of the owner/resident is likely to cause a nuisance, hazard with any other person or unreasonably interferes with the rights of another person to use and enjoy the common property, common assets or another strata lot?
- Is it possible that the activity of the owner/resident is causing damage to the common assets or common property of the strata corporation ?
- Will the damage potentially result in costs for the strata corporation ?

Consider common and limited common areas:

- While it may be desirable for people to only smoke outdoors, smoking on decks, patios and balconies can be detrimental to the neighbours. Unless all of the windows of the neighbouring units are closed, the 2<sup>nd</sup> hand smoke will migrate which could pose potential risks as both a nuisance and a hazard. Second hand smoke is similar to smoke from barbeques that can also cause damage to interior personal items and the strata lot environment. Strata corporations adopt bylaws that restrict the use of devices or products that at certain times may create smoke that causes damage, a nuisance or a hazard to a neighbouring resident or strata lot.

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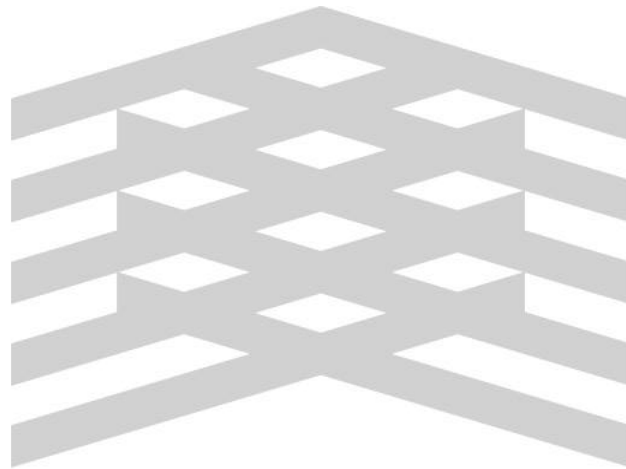
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- Elevators and hallways are usually contained and confined spaces. Second hand smoke poses a threat as both a nuisance and a hazard to other occupants. Unless hallway systems are pressurized, and the elevators ventilated, the conditions are far more extreme. For this reason, several strata corporations have prohibited smoking in common hallways, stairwells, elevators and underground parking areas. An improperly discarded lit cigarette also poses a fire risk to the residents of the building and the property.

When considering if a smoking bylaw ban or restriction is appropriate for your strata complex, consult a lawyer before you proceed. The strata corporation especially needs to be cautious in limiting life style activities in strata lots. The Human Rights Code does apply to strata corporations. If the strata corporation adopts bylaws that may be directed at a minority of individuals with no reasonable cause or justification, the strata corporation could find themselves on the receiving end of a costly Human Rights claim.



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