



SAMPLE COMPLAINT LETTER

Requesting Council take steps to reduce or eliminate the problem of second-hand smoke infiltration

This sample letter is designed for residents who are being involuntarily exposed to second-hand smoke infiltrating their homes from neighbouring units. If smoking is permitted in your building, residents are allowed to smoke, but they do not have an unfettered right to smoke

Pursuant to the Schedule of Standard Bylaws in the Strata Property Act, virtually all strata corporations in BC have a bylaw that prohibits behaviour that creates a nuisance or hazard to another person. This can include smoking, regardless of whether the strata corporation has a non-smoking bylaw in place. If a resident's smoke is infiltrating neighbouring units on a frequent and on-going basis, and causing an unreasonable disturbance, strata councils have the authority and responsibility to address these complaints.

Strata corporations should be aware that a complaint about an unreasonable disturbance is not just an issue that must be addressed between neighbours. Section 26 of the Strata Property Act requires that a strata corporation enforce the bylaws. The corporation has a duty to exercise their powers and perform the duties of a corporation, including enforcing their bylaws.

Before you write your strata council to take action, be sure you have done the groundwork of collecting evidence concerning the source, extent, frequency and impact of the second-hand smoke problem. Further, taking an informal approach at the beginning may result in a satisfactory resolution to the problem, and may be less expensive and less time consuming than initiating more formal measures, such as arbitration or lawsuits.

It is also a good idea to try to negotiate a solution before taking more formal actions. Try putting forward suggestions of possible solutions to solve the problem. You may have an idea that has not been considered, so put forward a proposal that you think might work.

Describe the source and extent of the problem.

STEPS

Describe how often the smoke is coming in, where it comes from and how much is entering your unit. According to case law, the issue is not so much whether you regard the amount of smoke as a substantial discomfort or inconvenience, but whether the average person residing in your complex would be of the same view.

Identify:

- When the problem first started;
- How the smoke is entering your unit (through open patio doors);
- Where the smoke is coming from (i.e. neighbour's balcony, or inside the unit);
- How often the smoke enters your unit on a daily or weekly basis? List the dates, times and frequency of occurrence;

EXAMPLE

Dear [Name]

Re: Second-hand smoke infiltrating my unit and causing an unreasonable nuisance.

I am an owner residing at [enter address]. Unfortunately, I am currently faced with second-hand smoke coming into my unit from the neighbouring unit at [enter the unit number if you know where the smoke is coming from]. The smoke comes in through the closet in my daughter's bedroom, and also seems to be coming in through the gaps around the plumbing under the bathroom cupboard. It is definitely worse in the evenings and weekends when the smoking tenant is home. It happens every single day without fail. (See attached log with the times and dates the smoke entered my home)

- How much smoke is entering your unit? Does the smoke stay in one area or does it permeate other areas of the home?

Describe how it has impacted your health.

STEPS

Identify:

- Symptoms or illnesses caused by the smoke infiltrating your home, including asthma attacks, headaches, burning and watery eyes, sore throats, bronchitis, ear infections, heart problems, to name just a few.
- Is smoke worsening a pre-existing health problem such as asthma, allergies, heart disease, high blood pressure, fibromyalgia, or cancer?
- Do you fear for the health of your newborn? Babies who are exposed to second-hand smoke have a higher risk of dying from Sudden Infant Death Syndrome

EXAMPLE

*My daughter has asthma and I have noticed she is coughing more and needs to use her puffer at night, something she didn't previously need to do. I am enclosing a letter from our family doctor stating that my daughter should not be exposed to second-hand smoke and that she could suffer a serious asthmatic attack.
I am very concerned about my daughter's health.*

Also, because of the extent of the smoke I suffer from frequent headaches. I have never suffered from headaches in the past, so it is clearly linked to the smoke. When I leave my home, or when I'm at work (which is smoke-free), I don't get the headaches.

Describe how the smoke has denied you your full use and enjoyment of your home including:

STEPS

Identify:

- Have parts, or all, of your home become uninhabitable at times?
- Are you forced to stay out of certain rooms because of the smoke?
- Are you unable to open your windows or balcony door?
- Are you unable to use your balcony?
- Are you unable to use your fans or heating system?
- Have you been forced to leave your home on certain days or at specific times to avoid the smoke?
- Are friends and family unable to visit you because of the smoke?

EXAMPLE

Because the smoke infiltration is significant in my daughter's bedroom, she now sleeps in my room on a cot. We keep her bedroom door closed all the time, so unfortunately we don't have use of this room anymore, despite paying for a two-bedroom apartment.

We also are forced to keep our windows open day and night to try to air out the unit, but now that the weather is getting colder, we won't be able to keep the windows open as often.

Further, we can't afford the extra heating costs because we have to keep the windows open in the winter. We are very fearful that with the coming cold months, the problem will worsen.

Describe what steps you have taken to resolve the problem yourself.

STEPS

If you have to take more formal steps, it will be important to show that you took steps to minimize the problem yourself. I have tried using duct tape to block the cracks, and seal the gaps around the pipes in the bathroom, but it hasn't stopped the smoke

EXAMPLE

I have tried using duct tape to block the cracks and seal the gaps around the pipes in the bathroom, but it hasn't stopped the smoke from entering our home. As indicated above, we keep our daughter's bedroom door closed all the time, and keep our

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Collect and attach supporting evidence.

STEPS

- Obtain written proof from neighbours, friends and family concerning the amount and frequency of smoke entering your home. The more people who can verify your complaint, the stronger your case.
- Obtain a letter from your physician to verify that the smoke is making you or your family members sick, or aggravating an existing condition or illness.

EXAMPLE

Please find the attached documents to support my claim of an unreasonable nuisance due to excessive smoke migration.

Provide information about the dangers of second-hand smoke. (Optional)

STEPS

For more information on the dangers of second-hand smoke go to the US Surgeon General's Report at: www.surgeongeneral.gov/library/secondhandsmoke/

EXAMPLE

Second-hand smoke:

Second-hand smoke is a serious health hazard that can lead to disease and premature death in children and non-smoking adults. There is no safe level of exposure. Even brief exposure can be harmful to people's health.

Second-hand smoke:

- *is poisonous, and exposes residents and far to over 4000 chemicals;*
- *contains more than 50 chemicals that are known to cause cancer in humans;*
- *Is a class 'A' cancer causing substance ranked with the most deadly substances, including benzene, chromium, cadmium, and arsenic*

Ask for what you want the strata council to do.

STEPS

- Indicate your willingness to negotiate a resolution
- Propose some potential solutions, such as: repairs to block the smoke; negotiating solutions with the smoking resident.

If a negotiated solution cannot be reached with the

EXAMPLE

The situation has become utterly intolerable and I need your help. Given the seriousness and urgency of the situation, I am asking that you talk to my neighbour and ask him to either stop smoking completely within his unit, or only smoke on the balcony at the North east corner. We can see if this would stop the smoke from entering our unit.



smoking resident, and there is evidence of an unreasonable disturbance caused by the smoke, the corporation has the authority to notify the smoking resident that they are in violation of the bylaws, and must cease the behaviour that is causing the nuisance. Strata corporations have a duty to enforce the bylaws, including enacting bylaw enforcement proceedings up to and including seeking relief in Court if necessary.

However, if this does not solve the problem, or my neighbour does not want to try a compromise solution, then I would ask that you find that he is in violation of the bylaws for causing a nuisance, and that bylaw enforcement proceedings be initiated.

Ask for a response by a specific date.

STEPS

Ask for a response by a specific date. Your bylaws may specify timeframes for responses to complaints.

EXAMPLE

I would appreciate a written response to my letter within two weeks so that I can move forward on this issue knowing your position.

Thanks very much for your assistance on this important matter.

Sincerely,

For more information, visit www.smokefreehousingbc.ca