



## Steps that Strata Residents Can Take to Address Second-Hand Smoke

If you are a strata resident suffering from second-hand smoke exposure in your home, you may want to consider collecting information about the source, extent, frequency and impact of the problem before approaching your smoking neighbour or strata council. 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.

### Document the source and extent of the problem

Consider using this sample resident log to track your efforts to address the problem.

- Identify how the smoke is entering your unit i.e. through your bedroom window; when you turn on your bathroom or kitchen fan, from the electrical outlets.
- Determine where the smoke is coming from i.e. neighbour's balcony, neighbour's inside unit, outside smoking area or some other channel.
- Identify how often the smoke enters your unit on a daily or weekly basis? Do you smell the smoke all the time, at certain times of the day – list the dates, times and frequency of occurrences.
- Identify when the problem started? Did you start smelling the smoke as soon as you moved into your unit? Did you notice the smoke when a new resident moved in?

### Document the health impacts on you and/or your family

- Document symptoms or illnesses caused by the smoke infiltrating your home. Symptoms may include asthma attacks, headaches, burning and watery eyes, sore throats, bronchitis, ear infections, heart problems, to name just a few.
- Indicate if the smoke is worsening a pre-existing health problem such as asthma, allergies, heart disease, high blood pressure, fibromyalgia, or cancer.
- Indicate whether the smoke seeping into your home is causing anxiety or fear due to the potential or actual health impacts on you or your family members.
- Indicate if you have a newborn in the home. Babies who are exposed to second-hand smoke have a higher risk of dying from Sudden Infant Death Syndrome (SIDS).

### Document interference with the use and enjoyment of your home

- Has the smoke significantly interfered with the use and enjoyment of your home?
- 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 because of the smoke?
- 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?

### **Collect supporting evidence**

- Obtain a copy of your bylaws filed at the Land Title Office. There may be additional bylaws concerning behaviours or nuisances that will strengthen your case.
- 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.
- Obtain information on the dangers of second-hand smoke

### **Mitigate the impact**

Consider taking steps to mitigate the problem yourself before taking more formal steps. This could include such actions as blocking the source of the smoke, negotiating with the smoking tenant, and talking to your property manager to help negotiate a solution, to name just a few. Here are some steps you might consider:

#### **a. Block or reduce the smoke**

- Seal the source of smoke if possible, such as electrical outlets and ceiling light fixtures
- Fill or patch cracks in walls, ceilings
- Insulate the air spaces around plumbing pipes
- Close windows and doors
- Weather-strip doors

Visit the [Canada Mortgage and Housing Corporation website](#) for useful tips on Solving Odour Transfer Problems in Your Apartment.

Go to the [US Indoor Environmental Engineering website](#) for information on how to reduce second-hand exposure in multi-unit dwellings

#### **b. Talk to your neighbours**

If you feel comfortable, consider talking to your smoking neighbour. He or she might not realize that the smoke is a problem for you. Try to focus on solutions such as asking the neighbour to smoke outside, smoke in another area, close doors or windows, or seal the source of the smoke.

Seek support from other neighbours in the building. They might be experiencing the same problem, and may be willing to talk to the smoking neighbour with you.

### c. Advocate for creating a non-smoking bylaw

- Ask your strata council to add a non-smoking bylaw resolution on the Agenda at the next annual general meeting. Smoking bylaws are legal and have many benefits for owners, including less damage to units, lower risk of fires, and fewer complaints about second-hand smoke.
- If necessary, seek support from other strata members about creating a non-smoking bylaw. Distribute a petition to get the necessary support (25% of voting owners) to add the resolution to the annual general meeting, or request a hearing or special meeting. While the smoke may not personally affect others, your neighbours may be sympathetic and lend their support. The majority of condo owners in BC would prefer a smoke-free complex. (See [sample survey](#)) Refer your strata council to this website. The condo section includes steps on how to go smoke-free, as well as legal information and market research.

### Notify the Strata Corporation

#### a. Notify your strata corporation of the problem

- If all your efforts have failed to mitigate the problem, write a complaint letter to your strata corporation to request that they take action to rectify the problem.
- Provide them with your documented evidence of the source of the smoke, the frequency of the occurrence, its duration, the impact on your health, and the impact on the use and enjoyment of your home.
- Include any supporting evidence such as a letter from your physician concerning the impact on your health or letters from friends and neighbours to verify your claims.
- Identify what steps you have taken to resolve the problem to date.
- Indicate your willingness to negotiate a resolution, propose some potential solutions and ask for a response by a specific date (your bylaws may specify timeframe for responses to complaints).
- Consider sending a group letter if there are others in the building experiencing the same problem.
- Refer your strata council to this website. This section provides information about the strata corporation's duty to address nuisance complaints of second-hand smoke, as well as suggested steps to rectify the problem. It also provides a legal opinion for their reference. **Note:** Keep all records of correspondence with the Strata Corporation or property manager concerning this issue. If the corporation fails to take action to address this issue, you will need evidence that they knew about the problem, were warned that it was a significant interference, and refused to take steps to address the problem.

#### b. Negotiate solutions

It is always a good idea to try to negotiate a solution before taking more formal actions. It is also important to put 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. If you haven't tried to mitigate the problem yourself, request that your strata corporation consider potential solutions such as:

#### Conducting repairs to your unit or the smoker's unit to seal off the smoke

- Install door sweeps and weather stripping around windows
- Fill or patch cracks in walls and ceilings
- Insulate the air spaces around plumbing pipes

- Insulate and place covers over electrical outlets

### **Inspecting the ventilation system for proper function**

- Clean, change or install new filters in the ventilation system
- Add more fresh air intake into the ventilation system
- Restrict the amount of air exhausted through the ventilation system from units where there is smoking

**Note:** It should be clarified that structural repairs or improving ventilation systems may reduce some of the smoke infiltrating your home, but it will not eliminate the problem. The Centre for Energy and Environment in Minneapolis conducted an extensive study of air flow in multi-unit dwellings in 2004, and identified a number of measures to reduce smoke transfer between units in buildings. The findings show that while about one-half of the units treated had a reduction in contaminants of greater than 50%, close to one-third of the units treated had no reduction of contaminants at all.

### **Working with the smoking owner to negotiate a solution**

- Request that the strata corporation consider negotiating a solution with the smoking resident, such as asking the smoking owner to stop smoking in specified areas where the smoke is entering your unit; or only smoke in designated outside areas.

### **c. Request strata bylaw enforcement procedures be initiated**

Pursuant to the Schedule of Standard Bylaws in the Strata Property Act, virtually all strata corporations in BC have bylaws that prohibit 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 negotiated solution cannot be reached with the smoking resident, and there is evidence of significant interference 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.

If your strata corporation refuses to act, or you are not satisfied with the solutions offered or taken, check out our section on last resort remedies.

### **Last resort remedies**

If your strata corporation refuses to act, or you are not satisfied with the solutions taken, here are a few last resort measures that can be taken. You might also consider contacting your strata association if you are a member to seek assistance and guidance on next steps.

Before initiating formal procedures, including initiating a lawsuit, it is recommended that you seek legal advice.

#### **a. Initiate Informal dispute resolution procedures**

- If you have provided sufficient evidence that second-hand smoke is unreasonably interfering with the use and enjoyment of your home, and causing

a significant nuisance, [Section 26 of the Strata Property Act](#) requires the strata corporation to enforce the bylaws. (See [BC Laws: Strata Property Act](#))

- If the strata corporation refuses to act to minimize or eliminate the impact of the behaviour, consider following the informal processes under the Strata Property Act for resolving disputes, including:
  - Request a hearing at a strata council meeting. Apply in writing, state reason for hearing and request a decision be made to rectify the problem.
  - Requisition for a Special General Meeting to consider a resolution. Check bylaws - may require that written demand include signatures from 25% of voting corporation members.
  - Propose a resolution to be included on the agenda of the next Annual General Meeting. Check Bylaws – if necessary, you may be required to obtain signatures from 25% of voting corporation members.
  - Request a dispute resolution committee be organized to resolve the problem.

**b. Initiate formal dispute resolution procedures**

- Request that the dispute be referred to Arbitration for resolution
- Supreme Court can appoint an Arbitrator if necessary c. Court Action

If all your efforts fail to rectify the problem of second-hand smoke infiltrating your home, you have the last resort remedy of initiating a lawsuit. You will need to decide which parties to sue. This could include:

- The strata corporation for failing to enforce its bylaws against the smoker. Section 26 of the Strata Property Act conveys the concept that councils have a duty to enforce bylaws. You can also apply to the Supreme Court to remedy a significantly unfair decision made by the strata corporation or property manager.
- The smoking neighbour for an order to restrain the person(s) from smoking.

However, this issue is not black and white, and it is recommended that you seek legal advice if faced with applying to court to enforce a nuisance violation caused by smoking. (See [Legal Opinion](#))

**For more information visit [www.smokefreehousingbc.ca](http://www.smokefreehousingbc.ca)**