



## Enforcing a Non-Smoking Bylaw

Once a strata corporation creates a smoking prohibition or limitation bylaw, having followed the required bylaw procedures under the *Strata Property Act*, and having filed the bylaw with the Land Title Office, the strata corporation is responsible to enforce the bylaw.

### Bylaw Enforcement Procedures

If there is evidence that the smoking prohibition or limitation bylaw or rule has been violated, prior to obtaining a remedy for non-compliance of the smoking bylaw or rule, the strata corporation must first follow the procedures for enforcing bylaws under Section 135 of the *Strata Property Act* (SPA).

The Strata Corporation:

- Receives a complaint about a bylaw or rule infraction (i.e. smoking is occurring in an area that is designated as non-smoking under the bylaw).
- Provides the owner or tenant with notice of the complaint(s) received against him or her in writing, including the particulars of the complaint(s), such as date(s), time(s) and the conduct giving rise to the complaint(s). If the person is a tenant, give notice of the complaint to the person's landlord and to the owner.
- Provides the owner or tenant with a reasonable opportunity to answer each complaint, including an offer of a hearing before the Council if requested.
- Provides the person accused of breaching the bylaw with its written decision regarding the complaint and the enforcement to be taken as soon as feasible.

**Note:** It is important to note that trying to shorten the process or not strictly complying with the proper enforcement procedures could result in enforcement decisions being set aside by the Courts.

### Enforcement Remedies

Once the enforcement procedures have been followed, and the council has decided that a smoking bylaw or rule has been breached, the Corporation has the option of obtaining various remedies under the *Strata Property Act*. These remedies include:

#### Internal Remedies

- Imposing fines, including for continuing breaches of the bylaw without further compliance with the enforcement procedures
- Requiring the person to pay the costs of remedying a contravention. For instance, requiring an owner to repay the costs of cleaning up discarded cigarettes on common property or cleaning a strata lot damaged by smoke; costs for insulating electrical outlets and ducting to keep smoke out; blocking holes or fixing air quality by updating ventilation systems.
- Denying a person the use of a recreational facility if the breach was connected to the facility (i.e. smoking in the entertainment room)
- Eviction of tenant – final resort (See our Legal Opinion posted on the website)



#### **Court-ordered remedies**

- The strata corporation may commence a petition in the Supreme Court of BC, with supporting Affidavits, for an order that the owner, tenant occupant or visitor stop contravening the Act, Regulations, bylaws or rules.
- Based on case law, it could be argued that an owner who is ordered by a Judge to comply with a Smoking Prohibition Bylaw and fails to do so, could be subject to an order to vacate his or her strata lot. (See our Legal Opinion on the website)
- Note: if a strata corporation/agent is served with a notice of court action by an owner or are defending a human rights case, they should immediately contact their insurer – especially if an owner is asking for damages. The insurance company may pay for the costs of a lawyer.

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**Source: Legal Opinion posted on our website**

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