



## How to Create a No-Smoking Bylaw for a NEW Strata Complex

Creating a non-smoking bylaw for a new condominium complex prior to strata lots being sold is easy to do and makes good business sense. A developer won't have any trouble attracting buyers due to high demand for smoke-free housing in BC, and the strata corporation will avoid the problems, costs, and fire risks of maintaining buildings where smoking is allowed.

Furthermore, an advantage to passing bylaws before strata lots have been sold, is that it allows the strata to argue if they have to defend the bylaw in court, that all owners had notice of the bylaws before they purchased.

Here are some issues to consider as you move forward to create a smoking limitation or prohibition bylaw: (Source: See Legal Opinion on website)

### 1. Consider the type and scope of the non-smoking bylaw

Strata corporations can restrict smoking either by creating or amending a Bylaw or Rule:

- With bylaws, a strata corporation can prohibit smoking in strata lots by amending the bylaws. Amending the bylaws to address smoking is recommended.
- Rules are narrower in scope than bylaws and only apply to common property and common assets. Smoking cannot be addressed in strata lots through rules, and therefore this method is not recommended as a way to prohibit smoking throughout the building. If you do create a no-smoking rule, consider adding the rule to the bylaws so it will be filed in the Land Title Office and new owners will be aware of it at point of purchase.

Consider the scope of the bylaw. In choosing the appropriate bylaw for your complex, keep in mind the nature and layout of the complex, and ensure it is connected to protecting the health of strata residents.

It is important to clearly set out which areas will be designated as smoke-free.

Examples of the types of bylaws that you can adopt include:

- Smoking Prohibition Bylaw: bans smoking on the common property, limited common property such as balconies; and in strata lots.
- Smoking Limitation Bylaw: bans smoking on the interior common property, but not in individual strata lots or on the limited common property (balconies).
- Smoking Limitation Bylaw: bans smoking on the interior common property and on limited common property (balconies), but not on strata lots.

While the *Tobacco Control Act* banning smoking in common areas and entrances of public buildings applies to condo complexes, strata corporations wanting to enforce a non-smoking bylaw on the common property may want to consider adopting a bylaw that includes this provision. This is to ensure that owners can't argue that they didn't know about the provincial laws.

Regardless of the scope of the bylaw chosen, it must comply with all relevant legislation, including:

- *Strata Property Act*
- *Residential Tenancy Act*
- *Human Rights Code*

## **2. Consider potential challenges to a smoking limitation or prohibition bylaw**

Bylaws registered by an owner/developer prior to selling strata lots in a complex are generally subject to the same legal arguments and constraints as bylaws passed by a ¾ vote of the owners after strata lots have been sold.

While having the owner/developer create a smoking prohibition bylaw is most effective, and there is legislative support to adopt a non-smoking bylaw in a strata complex, there is also case law that could challenge the bylaw, including (See legal opinion for more information):

- The Human Rights Code: argument that smoking prohibition bylaw discriminates against heavily addicted smokers. The HRC contains several provisions applicable to smoking bylaws, including:
  - Section 8: Discrimination in accommodation, service and facility
  - Section 9: Discrimination in purchase of property
  - Section 10: Discrimination in tenancy premises
- Section 121, Strata Property Act – argument could be made that the smoking prohibition bylaw is not enforceable because it contravenes the Human Rights Code
- Section 141, Strata Property Act – argument that the smoking prohibition bylaw establishes a screening criteria for tenants

**Note:** While these issues have not made it to the Courts, the issues may need to be considered when creating a smoking prohibition bylaw. It should be clarified that the posted legal opinion argues that smoking prohibition bylaws are legal and can be justified if smoking is banned in areas where non-smoking residents of the complex are put at risk. See our website for a sample Smoking Prohibition Bylaw developed by legal counsel to address issues of accommodation.

## **3. Choose and Register appropriate bylaw**

- Draft the smoking bylaw. See sample Bylaw on the website.
  - Seek legal advice on final draft of bylaw
  - Request Strata Association review bylaw if appropriate
- Owners/developers can register the amended set of bylaws that include smoking prohibitions. These bylaws are the bylaws for the strata corporation, unless repealed or changed at a later date under the provisions of the Strata Property Act.

## **4. Promote your smoke-free strata complex**

- Post “no-smoking” signage in appropriate locations on the property. (Download official no-smoking signage at [www.bc.lung.ca](http://www.bc.lung.ca)) free of charge, which complies with the BC *Tobacco Control Act* banning smoking in common areas of apartments and three metres from entrances (depending on which municipality you live in).
- Register your smoke-free building on our online Smoke-Free Housing Registry.

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