

Butting out a smoking hot issue for stratas

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By Tony Gioventu

Dear Condo Smarts: Over the past few years, our 111-unit condo building has been unsuccessful in passing a bylaw to restrict smoking in common areas. The subject of owners not being able to smoke in their strata lots evokes a hostile response from every camp. We have an older building that is not well-ventilated, so whether someone is smoking in a strata lot or in the hallway, everyone on the floor shares the smoke. Council is ready to propose another bylaw at our annual general meeting, but we need to know if a bylaw that prohibits smoking on common property or in a strata lot is enforceable.

Jill Robertson, Vancouver

Dear Jill: There is some relief in store for every strata in the province when it comes to smoking on common property. As of March 31, 2008, under the Tobacco Control Act, smoking is prohibited in places customarily available to the public, which could include a strata's common property areas, such as elevators, hallways, parkades, common rooms like reception areas and swimming pools, laundries and lobbies or buffer zones around public areas, such as doorways or adjacent patios or entries.

So that part of your question is addressed by the legislation. But what about the strata lot? This is a complex, contentious issue. The dilemma is how to protect the rights of non-smokers from second-hand smoke, especially when they share common walls, ceilings or floors, while respecting the rights of smokers in their strata lots.

If your strata corporation is contemplating prohibiting smoking in strata lots, you need to seek legal advice in the creation of the bylaw, and consider accommodating smokers in the building who might be heavily addicted or who entered into tenancy agreements before the bylaw is enacted.

The strata should also consider why it is adopting this bylaw. Is it for nuisance or property impact matters or health concerns? The Heart and Stroke Foundation of B.C. and Yukon is developing a project to address second-hand smoke in multi-unit dwellings, and is seeking input on an important survey. You can complete the survey by going to this web page: <http://ws4.voxco.com/IntWeb.dll/online/NRG/25380993>. The deadline is March 25.

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