

Condo Smarts April 20th – 24th, 2016

Are Non-Smoking Bylaws Allowed?

Dear Tony: We have a chronic problem in our strata with two heavy smokers who live on the ground floor. They either smoke on their patios or in their strata lots and the smoke travels to the other homes. Our building is older, so no air conditioning, so as the warm weather approaches, owners will start leaving their windows open for ventilation, which means the smoke ends up in the units above. We have talked to the residents of these units and they have pretty much taken the approach that they have been smokers all their lives, they were original residents and they have no intention of changing. The other 44 owners in our building want us to adopt non-smoking bylaws but we were told they are not enforceable. Is there a better way to deal with this problem? Henry

Dear Henry: A recent court decision, strata plan NW1815 vs Aradi, has upheld the enforceability of non-smoking bylaws, and in the face of an application to the Human Rights Tribunal, the courts have ordered an owner stop smoking in his strata lot. The strata bylaw prohibits smoking in strata lots, the interior common property, patios, within 3 meters of a door, window or air intake or any land that is a common asset. The judge was satisfied the strata acted in good faith in seeking an order to enforce the non-smoking bylaw. While the owner may have an addiction, the decision was considered in the context of the Strata Property Act and the duty of the strata corporation to enforce its bylaws.

Smoking bylaws are similar to other nuisance bylaws that are part of the Standard Bylaws of the Act or those adopted by strata corporations. For example, many strata corporations have banned the use of barbecues on decks and balconies because of the fire risk, smoke damage to building exteriors and strata lots, and the health risks associated with the smoke. Nuisance bylaws help strata corporations control activities that interfere with occupants use and enjoyment of their strata lots and common property. The strata council has an obligation to enforce the bylaws, including nuisance where smoke, noise, odors or activities impact other occupants. The key to successful bylaw enforcement starts with enforceable bylaws. Seek legal advice on bylaws that result in restrictive use, such as age restrictions, rentals, pets and non-smoking bylaws. Proper enforcement procedures must be followed. The strata council receives a complaint, gives notice of the complaint including the particulars of the complaint to the strata lot accused, and the owner/tenant are entitled to respond in writing or demand a hearing. Once these procedures have been followed, the strata council then determines whether the complaint is valid, whether fines may be imposed or other actions considered. If an owner/tenant does not comply with the bylaws, the strata may seek a court injunction ordering the owner to comply with the bylaws, and later this fall applications may be made to the Civil Resolution Tribunal providing quicker access at a reduced cost to request a decision ordering an owner/tenant to comply with the bylaws.

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