

Legal Opinion

The information that follows comes from a legal opinion we commissioned to provide easy reference to strata corporations regarding the legality, process and challenges of creating and implementing a non-smoking bylaw in strata corporations, in compliance with the BC *Strata Property Act*.

It should be noted that this information is intended for the use of condo corporations that are solely residential. If you are considering a no-smoking policy in a commercial or "mixed-use" condo corporation, it is necessary to consider further issues, including the application of provincial occupational health and safety regulations, and provincial and municipal public smoking prohibitions.

As this section represents our interpretation of the legal opinion, and does not address all of the issues raised in the opinion, it should be used for informational purposes only. If you are planning to implement a non-smoking policy, it is recommended that the complete legal opinion be reviewed. It is also recommended that condominium corporations dealing with specific legal questions on this matter seek independent legal advice.

Download: [Stratas - The Complete Legal Opinion](#)

1. Can a strata corporation adopt a non-smoking bylaw?
2. Does a non-smoking bylaw apply to residents who reside in the complex at the time the bylaw is passed?
3. Would the adoption of a non-smoking bylaw apply to existing tenants who have already signed a rental agreement with the owner?
4. Do provincial or municipal governments have smoke-free laws that apply to strata corporations?
- 5. Do strata corporations have to make reasonable accommodation for owners with a disability caused or exacerbated by second-hand smoke?**

A demonstrated allergy or environmental sensitivity to second-hand smoke could garner the protection of [The Human Rights Code](#) and require a strata corporation to take steps to accommodate the disability. This may include enforcing the bylaws that the strata corporation already has, or creating new bylaws that deal with the situation.

It has been established that a strata corporation's provision of management services comes under the purview of Section 8 of the Human Rights Code. While the Human Rights Code does not define either mental or physical disability, a wide range of physical and mental conditions has been granted disability status under the Human Rights Code. Traditionally, Courts, Tribunals and Arbitrators have given a broad and liberal interpretation of "disability."

To establish that a strata corporation has discriminated against an owner with respect to an accommodation, service or facility on the basis of a disability, a complainant would need to establish both that he/she had a disability and that the strata corporation knew about the disability.

In one case, *Konieczna v. The Owners, Strata Plan NW2489*, 2003, BCHRT 38, the complainant alleged discrimination because of a bylaw that prevented the installation of flooring other than wall-to-wall carpeting. The complainant alleged this was discrimination on the basis of a physical disability as she was asthmatic and carpeting aggravated her condition. The Tribunal concluded that the complainant's condition was indeed a physical disability, that the strata was aware of the disability, and that she was entitled to protection under the Human Rights Code.

Once a complainant establishes disability discrimination, the onus is shifted to the strata corporation to prove, on a balance of probabilities, that it had a reasonable justification for the discrimination. In this case, the strata did not raise the

defence of justification, and the Tribunal ordered that the strata allow the complainant to install hardwood flooring and pay compensatory costs of \$3500 for injury to her dignity, feelings and self-respect.

A Smoking Prohibition Bylaw can be supported by the Human Rights Code where the layout of the complex would require a strata corporation to ban smoking in order to accommodate a resident with a physical disability, such as asthma, allergies or some other disability exacerbated by smoke. For example, while it might be impossible to stop smoke travelling from one strata lot into another in a heritage house, it would be more difficult to justify a Smoking Prohibition Bylaw in a bareland strata corporation where a strata lot is comprised of a plot of land.

6. Is addiction to nicotine a disability? If so, do Strata Corporations have to make accommodations for smokers when adopting a non-smoking bylaw?

7. If a strata corporation adopts a non-smoking bylaw, how can it be enforced?

8. If a strata corporation does NOT have a non-smoking bylaw, how can complaints of second-hand smoke be addressed?